

71 Am. Jur. 2d State and Local Taxation § 207

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Four. Exemptions from Taxation

XIV. In General; Creation and Validity of Exemptions

A. In General

§ 207. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2187

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 83, 84](#) (Complaint, petition, or declaration—Allegation—Property tax as breach or impairment of exemption contract between states)

While, as a matter of public policy, property of the State and of its municipal subdivisions, devoted to governmental uses and purposes, is generally deemed to be exempt from taxation although no express provision is made therefor,¹ and it is the policy of most if not all states to exempt certain classes of property from taxation, particularly property devoted to charitable, educational, and religious purposes,² in the case of privately owned property, even that devoted to public or benevolent uses, assessment for taxation is the rule, and exemption therefrom is the exception.³ It is the general policy of the law to make all taxable property share the common burden of taxation, and any claim for exemptions asserted by the owner, other than a public governmental body, must rest upon some definite provision of law granting him or her a tax exemption.⁴

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Footnotes

1 §§ 242 to 257.

2 §§ 269 to 308.

3 State v. Yuma Irr. Dist., 55 Ariz. 178, 99 P.2d 704 (1940); Provena Covenant Medical Center v. Department of Revenue, 236 Ill. 2d 368, 339 Ill. Dec. 10, 925 N.E.2d 1131 (2010); Grand Lodge, A.O.U.W. of Iowa v. Madigan, 207 Iowa 24, 222 N.W. 545 (1928); In re Goddard, 39 Kan. App. 2d 325, 180 P.3d 604 (2008); Born v. Board of Assessors of Cambridge, 427 Mass. 790, 696 N.E.2d 142 (1998); Skyline Preservation Foundation v. County of Polk, 621 N.W.2d 727 (Minn. 2001); United Cerebral Palsy Ass'n of Greater Kansas City v. Ross, 789 S.W.2d 798 (Mo. 1990); New Jersey Carpenters Apprentice Training and Educ. Fund v. Borough of Kenilworth, 147 N.J. 171, 685 A.2d 1309 (1996); Sisters of Charity of Cincinnati, Ohio v. Bernalillo County, 93 N.M. 42, 596 P.2d 255 (1979); Matter of North Carolina Inheritance Taxes, 303 N.C. 102, 277 S.E.2d 403 (1981); Ares, Inc. v. Limbach, 51 Ohio St. 3d 102, 554 N.E.2d 1310 (1990); Skyline Assembly of God v. Department of Revenue, 274 Or. 259, 545 P.2d 879 (1976); North Alamo Water Supply Corp. v. Willacy County Appraisal Dist., 804 S.W.2d 894 (Tex. 1991); Corporation of Episcopal Church in Utah v. Utah State Tax Com'n, 919 P.2d 556 (Utah 1996); Smyth County Community Hosp. v. Town of Marion, 259 Va. 328, 527 S.E.2d 401 (2000); HomeStreet, Inc. v. State, Dept. of Revenue, 166 Wash. 2d 444, 210 P.3d 297 (2009); Deutsches Land, Inc. v. City of Glendale, 225 Wis. 2d 70, 591 N.W.2d 583 (1999); Laramie County Bd. of Equalization v. Wyoming State Bd. of Equalization, 915 P.2d 1184 (Wyo. 1996).

4 Crim v. Phipps, 601 So. 2d 474 (Ala. 1992); Recreation Centers of Sun City, Inc. v. Maricopa County, 162 Ariz. 281, 782 P.2d 1174 (1989); Sebring Airport Authority v. McIntyre, 642 So. 2d 1072 (Fla. 1994); City of Chicago v. Illinois Dept. of Revenue, 147 Ill. 2d 484, 168 Ill. Dec. 841, 590 N.E.2d 478 (1992); Baker v. City of Granite City, 189 Ill. App. 3d 119, 136 Ill. Dec. 535, 544 N.E.2d 1310 (5th Dist. 1989); State ex rel. Tomasic v. Kansas City, 237 Kan. 572, 701 P.2d 1314 (1985); Born v. Board of Assessors of Cambridge, 427 Mass. 790, 696 N.E.2d 142 (1998); Indian Hills Community Church v. County Bd. of Equalization of Lancaster County, 226 Neb. 510, 412 N.W.2d 459 (1987); Independent School Dist. No. 9 of Tulsa County v. Glass, 1982 OK 2, 639 P.2d 1233, 2 Ed. Law Rep. 579 (Okla. 1982); Johnson v. Department of Revenue, 292 Or. 373, 639 P.2d 128, 2 Ed. Law Rep. 282 (1982); Kent County Water Authority v. State Dept. of Health, 723 A.2d 1132 (R.I. 1999); Sears, Roebuck & Co. v. Woods, 708 S.W.2d 374 (Tenn. 1986); Benevolent & Protective Order of Elks, Lodge No. 151 v. City of Houston, 44 S.W.2d 488 (Tex. Civ. App. Beaumont 1931), writ refused, (May 16, 1932); Smyth County Community Hosp. v. Town of Marion, 259 Va. 328, 527 S.E.2d 401 (2000); Wisconsin Elec. Power Co. v. Department of Revenue, 59 Wis. 2d 106, 207 N.W.2d 841 (1973).

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Part Four. Exemptions from Taxation

XIV. In General; Creation and Validity of Exemptions

A. In General

§ 208. Presumptions and burden of proof

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2392

Exemptions from taxation are generally disfavored.¹ Tax exemptions are privileges accorded as a matter of legislative grace² and not as a matter of taxpayer right.³

The presumption is against any grant of tax exemption.⁴ Every reasonable doubt must be resolved in favor of the taxing power and against exemption from taxation,⁵ and the burden is upon the person claiming an exemption to prove his or her entitlement to it.⁶

The party claiming an exemption must prove by clear and convincing evidence that the property in question falls within both the constitutional authorization and the terms of the statute under which the exemption is claimed.⁷ The law does not imply the tax exemption in favor of a private owner.⁸

Tax exemptions are never presumed.⁹

CUMULATIVE SUPPLEMENT

Cases:

A taxpayer must show by clear and unequivocal proof that it qualifies for a tax exemption, and all doubts are resolved against the taxpayer. [Mo. Ann. Stat. § 621.050.2. Five Delta Alpha, LLC v. Director of Revenue](#), 458 S.W.3d 818 (Mo. 2015).

Although the burden of proof generally lies with the party seeking an exemption from taxation, where the taxing authority seeks to revoke that exemption previously granted, it is the taxing authority that has the burden of establishing that the property is not exempt from taxation. [Greater Jamaica Development Corporation v. New York City Tax Com'n](#), 25 N.Y.3d 614, 36 N.E.3d 645 (2015).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Kunes v. Samaritan Health Service](#), 121 Ariz. 413, 590 P.2d 1359 (1979); [Delta Air Lines, Inc. v. Com., Revenue Cabinet](#), 689 S.W.2d 14 (Ky. 1985); [North Alamo Water Supply Corp. v. Willacy County Appraisal Dist.](#), 804 S.W.2d 894 (Tex. 1991).
- 2 [St. Joseph's Living Center, Inc. v. Town of Windham](#), 290 Conn. 695, 966 A.2d 188 (2009); [In re Westboro Baptist Church](#), 40 Kan. App. 2d 27, 189 P.3d 535 (2008); [CFM Buckley/North LLC v. Board of Assessors of Greenfield](#), 453 Mass. 404, 902 N.E.2d 381 (2009); [Combs v. Metropolitan Life Ins. Co.](#), 298 S.W.3d 793 (Tex. App. Austin 2009), review denied, (Oct. 1, 2010); [Faydash v. City of Sheboygan](#), 332 Wis. 2d 397, 2011 WI App 57, 797 N.W.2d 540 (Ct. App. 2011).
- 3 [Auerbach v. State Tax Com'n](#), 142 A.D.2d 390, 536 N.Y.S.2d 557 (3d Dep't 1988); [Matter of State Sales and Use Tax Liability of Pam Oil, Inc.](#), 459 N.W.2d 251 (S.D. 1990); [Deutsches Land, Inc. v. City of Glendale](#), 225 Wis. 2d 70, 591 N.W.2d 583 (1999).
- 4 [People of State of New York ex rel. Metropolitan Street Ry. Co. v. State Board of Tax Com'rs](#), 199 U.S. 1, 25 S. Ct. 705, 50 L. Ed. 65 (1905); [Southwest Airlines Co. v. Arizona Dept. of Revenue](#), 217 Ariz. 451, 175 P.3d 700 (Ct. App. Div. 1 2008); [Grace Community Church Assemblies of God v. Illinois Dept. of Revenue](#), 409 Ill. App. 3d 480, 351 Ill. Dec. 323, 950 N.E.2d 1151 (4th Dist. 2011); [Barnes v. Jones](#), 139 Miss. 675, 103 So. 773, 43 A.L.R. 673 (1925); [Jim L. Shetakis Distributing Co., Inc. v. State, Dept. of Taxation](#), 108 Nev. 901, 839 P.2d 1315 (1992); [In re Julian's Estate](#), 93 Ohio App. 221, 50 Ohio Op. 508, 113 N.E.2d 129 (1st Dist. Hamilton County 1952); [Tibbals Flooring Co. v. Huddleston](#), 891 S.W.2d 196 (Tenn. 1994); [Laramie County Bd. of Equalization v. Wyoming State Bd. of Equalization](#), 915 P.2d 1184 (Wyo. 1996).
- 5 [Millsaps College v. City of Jackson](#), 275 U.S. 129, 48 S. Ct. 94, 72 L. Ed. 196 (1927); [Seton Hall College v. Village of South Orange](#), 242 U.S. 100, 37 S. Ct. 54, 61 L. Ed. 170 (1916); [Wiseman v. Madison Cadillac Co.](#), 191 Ark. 1021, 88 S.W.2d 1007, 103 A.L.R. 1208 (1935); [People ex rel. Carr v. Alpha Pi of Phi Kappa Sigma Educational Ass'n of University of Chicago](#), 326 Ill. 573, 158 N.E. 213, 54 A.L.R. 1376 (1927); [Williams v. Park](#), 72 N.H. 305, 56 A. 463 (1903).
- 6 [Container Corp. of America v. Franchise Tax Bd.](#), 463 U.S. 159, 103 S. Ct. 2933, 77 L. Ed. 2d 545 (1983); [Alabama Dept. of Revenue v. National Peanut Festival Ass'n, Inc.](#), 51 So. 3d 353 (Ala. Civ. App. 2010); [City of Nome v. Catholic Bishop of Northern Alaska](#), 707 P.2d 870 (Alaska 1985); [Miller County v. Opportunities, Inc.](#), 334 Ark. 88, 971 S.W.2d 781 (1998); [McDonnell Douglas Corp. v. State Bd. of Equalization](#), 10 Cal. App. 4th 1413, 13 Cal. Rptr. 2d 399 (2d Dist. 1992); [St. Joseph's Living Center, Inc. v. Town of Windham](#), 290 Conn. 695, 966 A.2d 188 (2009); [Genesee Corp. v. Owens](#), 155 Fla. 502, 20 So. 2d 654 (1945); [Andrews v. North Side Canal Co.](#), 52 Idaho 117, 12 P.2d 263 (1932); [Streeterville Corp. v. Department of Revenue of State of Ill.](#), 186 Ill. 2d 534, 239 Ill. Dec. 578, 714 N.E.2d 497 (1999); [Crown Concrete Co. v. Conkling](#), 247 Iowa 609, 75 N.W.2d 351 (1956); [In re Genstler Eye Center & Clinic/Genstler Medical Care Facility](#), 40 Kan. App. 2d 411, 192 P.3d 666 (2008); [Willowdale LLC v. Board of Assessors of Topsfield](#), 78 Mass. App. Ct. 767, 942 N.E.2d 993 (2011); [Crossroads Church of Prior Lake MN v. County of Dakota](#), 800 N.W.2d 608 (Minn. 2011); [Rollings v. Shipman](#), 341 S.W.3d 777, 269 Ed. Law Rep. 401 (Mo. Ct. App. E.D. 2011); [Fort Calhoun Baptist Church v. Washington County Bd. of Equalization](#), 277 Neb. 25, 759 N.W.2d 475 (2009); [Society of Holy Child Jesus v. City of Summit](#), 418 N.J. Super. 365, 13 A.3d 886 (App. Div. 2011); [Al-](#)

Ber, Inc. v. New York City Dept. of Finance, 80 A.D.3d 760, 915 N.Y.S.2d 309 (2d Dep't 2011), leave to appeal denied, 16 N.Y.3d 712, 923 N.Y.S.2d 416, 947 N.E.2d 1195 (2011); *In re Appeal of Eagle's Nest Foundation*, 194 N.C. App. 770, 671 S.E.2d 366 (2009); *Arnegard v. Cayko*, 2010 ND 83, 782 N.W.2d 54 (N.D. 2010); *First Baptist Church of Milford v. Wilkins*, 110 Ohio St. 3d 496, 2006-Ohio-4966, 854 N.E.2d 494 (2006); *GDT CG1, LLC v. Oklahoma County Bd. of Equalization*, 2007 OK CIV APP 101, 172 P.3d 628 (Div. 1 2007); *Simpson v. Department of Revenue*, 299 Or. 282, 702 P.2d 399 (1985); *Locust Lake Village Property Owners Ass'n, Inc. v. Monroe County Bd. of Assessment Appeals*, 940 A.2d 591 (Pa. Commw. Ct. 2008); *TNS Mills, Inc. v. South Carolina Dept. of Revenue*, 331 S.C. 611, 503 S.E.2d 471 (1998); *Alpha Gamma Zeta House Ass'n v. Clay County Bd. of Equalization*, 1998 SD 101, 583 N.W.2d 167 (S.D. 1998); *Southwestern Bell Telephone Co. v. Combs*, 270 S.W.3d 249 (Tex. App. Amarillo 2008), review denied, (Oct. 1, 2010); *Corporation of Episcopal Church in Utah v. Utah State Tax Com'n*, 919 P.2d 556 (Utah 1996); *Smyth County Community Hosp. v. Town of Marion*, 259 Va. 328, 527 S.E.2d 401 (2000); *Olympic Tug & Barge, Inc. v. Washington State Dept. of Revenue*, 163 Wash. App. 298, 259 P.3d 338 (Div. 1 2011), review denied (Wash. Mar. 6, 2012); *Faydash v. City of Sheboygan*, 332 Wis. 2d 397, 2011 WI App 57, 797 N.W.2d 540 (Ct. App. 2011).

7 *Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368, 339 Ill. Dec. 10, 925 N.E.2d 1131 (2010).

8 *Smith v. Davis*, 323 U.S. 111, 65 S. Ct. 157, 89 L. Ed. 107 (1944); *Arizona State Tax Com'n v. Frank Harmonson Co. Metal Products*, 63 Ariz. 452, 163 P.2d 667 (1945); *Volusia County v. Daytona Beach Racing and Recreational Facilities Dist.*, 341 So. 2d 498 (Fla. 1976); *Streeterville Corp. v. Department of Revenue of State of Ill.*, 186 Ill. 2d 534, 239 Ill. Dec. 578, 714 N.E.2d 497 (1999); *Heartland Lysine, Inc. v. State, Dept. of Revenue and Finance*, 503 N.W.2d 587 (Iowa 1993); *International Paper Co. v. Board of Environmental Protection*, 1999 ME 135, 737 A.2d 1047 (Me. 1999); *Supervisor of Assessments of Baltimore County v. Keeler*, 362 Md. 198, 764 A.2d 821 (2001); *OXY USA, Inc. v. Mississippi State Tax Com'n*, 757 So. 2d 271 (Miss. 2000); *Appeal of Emissaries of Divine Light*, 140 N.H. 552, 669 A.2d 802 (1995); *New Jersey Carpenters Apprentice Training and Educ. Fund v. Borough of Kenilworth*, 147 N.J. 171, 685 A.2d 1309 (1996); *F.D.I.C. v. Commissioner of Taxation and Finance*, 83 N.Y.2d 44, 607 N.Y.S.2d 620, 628 N.E.2d 1330 (1993); *Peterson v. Heitkamp*, 442 N.W.2d 219 (N.D. 1989); *True Christianity Evangelism v. Zaino*, 91 Ohio St. 3d 117, 2001-Ohio-295, 742 N.E.2d 638 (2001); *New York Life Ins. Co. v. Board of Com'rs of Oklahoma County*, 1932 OK 193, 155 Okla. 247, 9 P.2d 936, 82 A.L.R. 1425 (1932); *Northwest Auto Co. v. Hurlburt*, 104 Or. 398, 207 P. 161 (1922); *Fleet Credit Corp. v. Frazier*, 726 A.2d 452 (R.I. 1999); *Tibbals Flooring Co. v. Huddleston*, 891 S.W.2d 196 (Tenn. 1994); *North Alamo Water Supply Corp. v. Willacy County Appraisal Dist.*, 804 S.W.2d 894 (Tex. 1991); *Smyth County Community Hosp. v. Town of Marion*, 259 Va. 328, 527 S.E.2d 401 (2000).

9 *Heath v. Midco Equipment Co.*, 256 Ark. 14, 505 S.W.2d 739 (1974); *Lowry v. McDuffie*, 269 Ga. 202, 496 S.E.2d 727 (1998); *Kimbrough v. Idaho Bd. of Tax Appeals*, 150 Idaho 417, 247 P.3d 644 (2011); *Pittman v. Sarpy County Bd. of Equalization*, 258 Neb. 390, 603 N.W.2d 447 (1999); *Rodey, Dickason, Sloan, Akin & Robb, P.A. v. Revenue Div. of Dept. of Taxation and Revenue of State of N.M.*, 107 N.M. 399, 759 P.2d 186 (1988); *Al-Ber, Inc. v. New York City Dept. of Finance*, 80 A.D.3d 760, 915 N.Y.S.2d 309 (2d Dep't 2011), leave to appeal denied, 16 N.Y.3d 712, 923 N.Y.S.2d 416, 947 N.E.2d 1195 (2011); *In re Estate of White*, 25 Ohio St. 3d 355, 496 N.E.2d 888 (1986); *Matter of State Sales and Use Tax Liability of Pam Oil, Inc.*, 459 N.W.2d 251 (S.D. 1990).

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Part Four. Exemptions from Taxation

XIV. In General; Creation and Validity of Exemptions

A. In General

§ 209. Taxation of exempt property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Counties](#)  2285

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 82](#) (Complaint, petition, or declaration—Allegation—Illegal levy of back taxes against exempt property)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 90](#) (Order—By administrative agency—Cancelling assessment against tax exempt property)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 91](#) (Judgment or decree—Compelling refund of taxes levied against tax exempt property)

In general, any tax levied against exempt property is one levied for an unauthorized purpose,¹ and any state, county, or city general tax upon any property exempt from taxation is void.² The voluntary payment of an invalid tax does not constitute a waiver.³

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Footnotes

- 1 Ponder v. Richardson, 213 Ark. 238, 210 S.W.2d 316 (1948); McDonald v. Masonic Temple Craft of North Platte, 135 Neb. 48, 280 N.W. 275, 118 A.L.R. 855 (1938); Muskogee Fair Haven Manor Phase I, Inc. v. Scott, 1998 OK 26, 957 P.2d 107 (Okla. 1998).
- 2 Evans v. Hallas, 64 Ariz. 142, 167 P.2d 94 (1946) (overruled in part on other grounds by, State v. Allred, 67 Ariz. 320, 195 P.2d 163, 4 A.L.R.2d 735 (1948)); McDonald v. Masonic Temple Craft of North Platte, 135 Neb. 48, 280 N.W. 275, 118 A.L.R. 855 (1938); Muskogee Fair Haven Manor Phase I, Inc. v. Scott, 1998 OK 26, 957 P.2d 107 (Okla. 1998).
- 3 Oak Lawn Cemetery of Baltimore County v. Baltimore County Com'rs, 174 Md. 280, 198 A. 600, 115 A.L.R. 1478 (1938); Independent School Dist. No. 9 of Tulsa County v. Glass, 1982 OK 2, 639 P.2d 1233, 2 Ed. Law Rep. 579 (Okla. 1982).

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Part Four. Exemptions from Taxation

XIV. In General; Creation and Validity of Exemptions

A. In General

§ 210. Self-execution of constitutional provisions

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West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2288

A.L.R. Library

[Constitutional exemption from taxation as subject to legislative regulation respecting conditions of its assertion, 4 A.L.R.2d 744](#)

Generally, constitutional provisions declaring that certain property is exempt from taxation are self-executing and need no legislation to enforce the exemption.¹ Other constitutional provisions, however, merely grant permissive authority to the legislature to exempt certain classes of property.²

While there is a lack of uniformity in the decisions, a majority of the cases adhere to the view that the legislature may impose reasonable regulatory conditions on the assertion of a self-executing, constitutional tax exemption.³ However, the legislature may not effect the repeal of a constitutional exemption from taxation.⁴

CUMULATIVE SUPPLEMENT

Cases:

Period of 30 months set out by constitution for state officials to make a payment of funds on a state general revenue appropriation does not apply to an appropriation considered to come into being by the constitution itself where the constitutional appropriation is self-executing. [Okla. Const. art. 5, § 55](#); [Okla. Const. art. 13, § 1a](#). [Independent School District # 52 of Oklahoma County v. Hofmeister](#), 2020 OK 56, 473 P.3d 475 (Okla. 2020), as corrected, (July 1, 2020).

[END OF SUPPLEMENT]

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Footnotes

- 1 [City of Sarasota v. Mikos](#), 374 So. 2d 458 (Fla. 1979); [Kansas Enterprises, Inc. v. Frantz](#), 269 Kan. 436, 6 P.3d 857 (2000); [National Cemetery Ass'n of Missouri v. Benson](#), 344 Mo. 784, 129 S.W.2d 842, 122 A.L.R. 893 (1939); [Muskogee Fair Haven Manor Phase I, Inc. v. Scott](#), 1998 OK 26, 957 P.2d 107 (Okla. 1998); [Egan Independent Consol. School Dist. No. 1 of Moody County v. Minnehaha County](#), 65 S.D. 32, 270 N.W. 527, 108 A.L.R. 572 (1936).
- 2 [Chicago Patrolmen's Ass'n v. Department of Revenue](#), 171 Ill. 2d 263, 215 Ill. Dec. 655, 664 N.E.2d 52 (1996); [Indian Hills Community Church v. County Bd. of Equalization of Lancaster County](#), 226 Neb. 510, 412 N.W.2d 459 (1987); [Lima v. Lima Cemetery Ass'n](#), 42 Ohio St. 128, 1884 WL 213 (1884); [Independent School Dist. No. 9 of Tulsa County v. Glass](#), 1982 OK 2, 639 P.2d 1233, 2 Ed. Law Rep. 579 (Okla. 1982).
- 3 [State v. Allred](#), 67 Ariz. 320, 195 P.2d 163, 4 A.L.R.2d 735 (1948); [Chesney v. Byram](#), 15 Cal. 2d 460, 101 P.2d 1106 (1940); [Kansas Enterprises, Inc. v. Frantz](#), 269 Kan. 436, 6 P.3d 857 (2000).
- 4 [City of Sarasota v. Mikos](#), 374 So. 2d 458 (Fla. 1979).

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Part Four. Exemptions from Taxation

XIV. In General; Creation and Validity of Exemptions

A. In General

§ 211. Legislative power, generally

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West's Key Number Digest

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The power to prescribe what property will be taxed implies the power to prescribe what property will be exempt.¹ Unless restrained by some particular provision of the state constitution, the legislature has full power to exempt any person or corporation or class of property from taxation, according to its views of public policy and expediency.² The legislature has the sole authority to create tax exemptions, not the state supreme court.³ Also, the constitutional power of the legislature to create a tax exemption includes the power to change or destroy that exemption, consistent with the constitutional principle of proportionality.⁴

Unless limited by the state constitution, the legislature's power to exempt is as broad as its power to tax.⁵ The nature and extent of exemption from taxation are wholly matters of legislative discretion.⁶ The legislature may not, however, broaden or add to the property tax exemptions allowed by the constitution.⁷

A tax exemption under federal law is not dispositive of whether real property is exempt from property tax under state law.⁸

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Footnotes

- ¹ [People v. James](#), 191 Cal. App. 4th 478, 119 Cal. Rptr. 3d 362 (5th Dist. 2010), as modified, (Dec. 30, 2010) and review denied, (Mar. 30, 2011) and cert. denied, 132 S. Ct. 220, 181 L. Ed. 2d 121 (2011); [City of Dubuque v. Meuser](#), 239 Iowa 446, 31 N.W.2d 882 (1948); [Director of Taxation, Dept. of Revenue v.](#)

- 2 Kansas Krude Oil Reclaiming Co., 236 Kan. 450, 691 P.2d 1303 (1984); Crafts v. Ray, 22 R.I. 179, 46 A. 1043 (1900); Ellerbe v. David, 193 S.C. 332, 8 S.E.2d 518 (1940).
- 3 Rogers v. Hennepin County, 240 U.S. 184, 36 S. Ct. 265, 60 L. Ed. 594 (1916); Board of Improvement Pav. Dist. No. 5 v. Sisters of Mercy of Female Academy of Ft. Smith, 86 Ark. 109, 109 S.W. 1165 (1908); School Dist. No. 25, Bannock County v. State Tax Commission, 101 Idaho 283, 612 P.2d 126 (1980); Woman's Club of Topeka v. Shawnee County, 253 Kan. 175, 853 P.2d 1157 (1993); Alpha Rho Zeta of Lambda Chi Alpha, Inc. v. Inhabitants of City of Waterville, 477 A.2d 1131, 18 Ed. Law Rep. 648 (Me. 1984); W. A. Foote Memorial Hospital, Inc. v. Kelley, 390 Mich. 193, 211 N.W.2d 649 (1973); Board of Sup'rs of Lamar County v. Hattiesburg Coca-Cola Bottling Co., 448 So. 2d 917 (Miss. 1984); Opinion of the Justices, 144 N.H. 374, 746 A.2d 981 (1999); Mohonk Trust v. Board of Assessors of Town of Gardiner, 47 N.Y.2d 476, 418 N.Y.S.2d 763, 392 N.E.2d 876 (1979); Crafts v. Ray, 22 R.I. 179, 46 A. 1043 (1900); Ellerbe v. David, 193 S.C. 332, 8 S.E.2d 518 (1940); Governor Clinton Council, Inc. v. Koslowski, 137 Vt. 240, 403 A.2d 689 (1979); WKBH Television, Inc. v. Wisconsin Dept. of Revenue, 75 Wis. 2d 557, 250 N.W.2d 290 (1977).
- 4 3545 Mitchell Road, LLC v. Board of Sup'rs of Lee County, 62 So. 3d 379 (Miss. 2011).
- 5 WB & T Mortg. Co., Inc. v. Board of Assessors of Boston, 451 Mass. 716, 889 N.E.2d 404 (2008).
- 6 As to state constitutional limitations on legislative power to create exemptions, see §§ 214 to 217.
- 7 General Motors Corp. v. City of Linden, 150 N.J. 522, 696 A.2d 683 (1997); Duke Power Co. v. Bell, 156 S.C. 299, 152 S.E. 865 (1930).
- 8 Simmons v. Idaho State Tax Com'n, 111 Idaho 343, 723 P.2d 887 (1986); W. A. Foote Memorial Hospital, Inc. v. Kelley, 390 Mich. 193, 211 N.W.2d 649 (1973); Benjamin Rose Institute v. Myers, 92 Ohio St. 252, 110 N.E. 924 (1915); Sears, Roebuck & Co. v. Woods, 708 S.W.2d 374 (Tenn. 1986); WKBH Television, Inc. v. Wisconsin Dept. of Revenue, 75 Wis. 2d 557, 250 N.W.2d 290 (1977).
- 9 Provena Covenant Medical Center v. Department of Revenue of State, 384 Ill. App. 3d 734, 323 Ill. Dec. 685, 894 N.E.2d 452 (4th Dist. 2008), judgment aff'd, 236 Ill. 2d 368, 339 Ill. Dec. 10, 925 N.E.2d 1131 (2010).
- 10 Provena Covenant Medical Center v. Department of Revenue, 236 Ill. 2d 368, 339 Ill. Dec. 10, 925 N.E.2d 1131 (2010).

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71 Am. Jur. 2d State and Local Taxation § 212

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State and Local Taxation

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Part Four. Exemptions from Taxation


XIV. In General; Creation and Validity of Exemptions

A. In General

§ 212. Federal constitutional limitations on legislative power

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2290, 2292

There is nothing in the Federal Constitution to prevent a state from granting exemptions from taxation so long as the grant does not violate fundamental rights secured by the constitution.¹ The power of a State to exempt from taxation is precluded by the 14th Amendment only where such power is arbitrarily exercised.² In the absence of suspect classifications or a fundamental right, legislation providing tax exemptions to some citizens and not others does not violate the Equal Protection Clause if there is a rational basis for the difference in treatment.³ Thus, reasonable classifications relating to tax exemptions may be made without violating equal protection of the laws.⁴

The Equal Protection Clause is violated by a State's grant of tax exemptions to organizations which discriminate in their membership on the basis of race.⁵ Similarly, tax exemptions that discriminate against interstate commerce have been held in violation of the Commerce Clause.⁶

The burden is on the party challenging the constitutionality of the exemption to show that no conceivable state of facts exists to support the statute.⁷

CUMULATIVE SUPPLEMENT

Cases:

State may not resort to a classification that is palpably arbitrary when imposing a tax without violating Equal Protection Clause. U.S.C.A. Const.Amend. 14. LSCP, LLLP v. Kay-Decker, 861 N.W.2d 846 (Iowa 2015).

[END OF SUPPLEMENT]

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Footnotes

- 1 [People of State of New York ex rel. Metropolitan Street Ry. Co. v. State Board of Tax Com'rs](#), 199 U.S. 1, 25 S. Ct. 705, 50 L. Ed. 65 (1905).
- 2 [Ohio Oil Co. v. Conway](#), 281 U.S. 146, 50 S. Ct. 310, 74 L. Ed. 775 (1930); [Dickinson v. Porter](#), 240 Iowa 393, 35 N.W.2d 66 (1948); [Opinion of the Justices](#), 144 N.H. 374, 746 A.2d 981 (1999); [Association of the Bar of City of New York v. Lewisohn](#), 34 N.Y.2d 143, 356 N.Y.S.2d 555, 313 N.E.2d 30 (1974); [Duke Power Co. v. Bell](#), 156 S.C. 299, 152 S.E. 865 (1930).
- 3 [Great Northern Nekoosa Corp. v. Board of Tax Assessors of Early County](#), 244 Ga. 624, 261 S.E.2d 346 (1979); [Board of Certified Safety Professionals of the Americas, Inc. v. Johnson](#), 112 Ill. 2d 542, 98 Ill. Dec. 363, 494 N.E.2d 485 (1986); [Delta Air Lines, Inc. v. Com., Revenue Cabinet](#), 689 S.W.2d 14 (Ky. 1985); [Spare-Time Recreation, Inc. v. State](#), 666 A.2d 81 (Me. 1995); [Aero Motors, Inc. v. Administrator, Motor Vehicle Administration](#), 274 Md. 567, 337 A.2d 685 (1975); [Nashoba Communications Ltd. Partnership v. Board of Assessors of Danvers](#), 429 Mass. 126, 706 N.E.2d 653 (1999); [Metropolitan Sports Facilities Com'n v. County of Hennepin](#), 478 N.W.2d 487 (Minn. 1991); [Missouri Pacific R. Co. v. Kirkpatrick](#), 652 S.W.2d 128 (Mo. 1983); [Opinion of the Justices](#), 144 N.H. 374, 746 A.2d 981 (1999); [Association of the Bar of City of New York v. Lewisohn](#), 34 N.Y.2d 143, 356 N.Y.S.2d 555, 313 N.E.2d 30 (1974); [Appeal of Springmoor, Inc.](#), 348 N.C. 1, 498 S.E.2d 177 (1998); [Quirk v. Campbell](#), 302 S.C. 148, 394 S.E.2d 320 (1990); [Sears, Roebuck & Co. v. Woods](#), 708 S.W.2d 374 (Tenn. 1986); [Tony P. Sellitti Const. Co. v. Caryl](#), 185 W. Va. 584, 408 S.E.2d 336 (1991).
- 4 [Kahn v. Shevin](#), 416 U.S. 351, 94 S. Ct. 1734, 40 L. Ed. 2d 189 (1974).
- 5 [Pitts v. Department of Revenue for State of Wis.](#), 333 F. Supp. 662 (E.D. Wis. 1971).
- 6 [Camps Newfound/Owatonna, Inc. v. Town of Harrison, Me.](#), 520 U.S. 564, 117 S. Ct. 1590, 137 L. Ed. 2d 852 (1997).
- 7 [Spare-Time Recreation, Inc. v. State](#), 666 A.2d 81 (Me. 1995); [Association of the Bar of City of New York v. Lewisohn](#), 34 N.Y.2d 143, 356 N.Y.S.2d 555, 313 N.E.2d 30 (1974); [Sears, Roebuck & Co. v. Woods](#), 708 S.W.2d 374 (Tenn. 1986); [Schievella v. Department of Taxes](#), 171 Vt. 591, 765 A.2d 479 (2000); [Tony P. Sellitti Const. Co. v. Caryl](#), 185 W. Va. 584, 408 S.E.2d 336 (1991) (construing an analogous state constitutional provision).

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Part Four. Exemptions from Taxation


XIV. In General; Creation and Validity of Exemptions

A. In General

§ 213. Federal constitutional limitations on legislative power—Effect of establishment of religion clause

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2290](#), [2292](#)

It is not violative of the religion clauses of the First Amendment of the United States Constitution for a State to grant property tax exemptions to religious organizations where: (1) the legislative purpose is not aimed at establishing, sponsoring, or supporting religion, and (2) the effect of the exemptions is not an excessive government entanglement with religion.¹ The legislative purpose of a property tax exemption for religious organizations is neither the advancement nor the inhibition of religion, and is neither sponsorship nor hostility, where the exemption is granted to all houses of religious worship within a broad class of property owned by nonprofit, quasi-public corporations which include hospitals, libraries, playgrounds, and scientific, professional, historical, and patriotic groups.² Moreover, exemption of religious organizations constitutes a reasonable and balanced attempt to guard against the latent dangers inherent in the imposition of property taxes and spares the exercise of religion from the burden of property taxation levied on private profit institutions. Thus, for purposes of the religion clauses of the First Amendment, the grant of tax exemption to a religious organization is not sponsorship because the government does not transfer part of its revenue to churches but simply abstains from demanding that the church support the state.³

A state system of providing income tax benefits to parents of nonpublic school children by allowing deductions of specific amounts from adjusted gross income in calculating their state income tax is invalid under the First Amendment's Establishment Clause as insufficiently restricted to assure that it will not have the impermissible effect of advancing the sectarian activities of religious schools.⁴

Footnotes

- 1 [Walz v. Tax Commission of City of New York, 397 U.S. 664, 90 S. Ct. 1409, 25 L. Ed. 2d 697 \(1970\).](#)
- 2 [Walz v. Tax Commission of City of New York, 397 U.S. 664, 90 S. Ct. 1409, 25 L. Ed. 2d 697 \(1970\).](#)
- 3 [Walz v. Tax Commission of City of New York, 397 U.S. 664, 90 S. Ct. 1409, 25 L. Ed. 2d 697 \(1970\).](#)
- 4 [Committee For Public Ed. and Religious Liberty v. Nyquist, 413 U.S. 756, 93 S. Ct. 2955, 37 L. Ed. 2d 948 \(1973\).](#)

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Part Four. Exemptions from Taxation


XIV. In General; Creation and Validity of Exemptions

A. In General

§ 214. State constitutional limitations on legislative power

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2290, 2292

A.L.R. Library

[Legislative power to exempt from taxation property, purposes, or uses additional to those specified in constitution, 61 A.L.R.2d 1031](#)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 88](#) (Answer—Defense—Constitutional prohibition against exemption of property from taxation—Invalidity of statute creating exemption)

The legislature is not required to exercise its constitutional authority to exempt certain real property from taxation, but where it does elect to recognize an exemption, it must remain within the limitations imposed by the state constitution, and no other subjects of property tax exemptions are permitted.¹ In some instances, exemptions from taxation may be made only by constitutional amendment.² A constitutional provision may allow the legislature to grant tax exemptions only if approved by a

two-thirds majority of each branch.³ Often, the legislature is without authority to grant an exemption from taxation where the exemption does not have a constitutional basis.⁴

When the state constitution limits the power of the legislature to grant tax exemptions, it will not be permitted indirectly to grant an exemption which it is precluded from granting directly.⁵ The legislature cannot grant an exemption from taxes on property and accept as a substitute an excise tax not based on the value of the property.⁶ The legislature may grant property exemptions only by "general laws" and must base exemptions on the property's use, not the owner's identity.⁷

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Footnotes

- 1 [Provena Covenant Medical Center v. Department of Revenue, 236 Ill. 2d 368, 339 Ill. Dec. 10, 925 N.E.2d 1131 \(2010\).](#)
- 2 [Lund v. Hennepin County, 403 N.W.2d 617 \(Minn. 1987\).](#)
- 3 [Lowry v. McDuffie, 269 Ga. 202, 496 S.E.2d 727 \(1998\).](#)
- 4 [Capital City Country Club, Inc. v. Tucker, 613 So. 2d 448 \(Fla. 1993\).](#)
- 5 [State v. Yuma Irr. Dist., 55 Ariz. 178, 99 P.2d 704 \(1940\).](#)
- 6 [Northwestern Mut. Life Ins. Co. v. Lewis & Clarke County, 28 Mont. 484, 72 P. 982 \(1903\).](#)
- 7 [Township of Holmdel v. New Jersey Highway Authority, 190 N.J. 74, 918 A.2d 603 \(2007\).](#)

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71 Am. Jur. 2d State and Local Taxation § 215

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Part Four. Exemptions from Taxation


XIV. In General; Creation and Validity of Exemptions

A. In General

§ 215. State constitutional limitations on legislative power —Effect of enumeration of particular subjects of exemption

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2290](#), [2292](#)

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[Legislative power to exempt from taxation property, purposes, or uses additional to those specified in constitution, 61 A.L.R.2d 1031](#)

As a general rule, when the state constitution enumerates certain permissible subjects of exemptions from taxation, the legislature is without power to lighten the burden of taxation on property not within any of the classes enumerated; such enumeration of the kinds of property that may be exempted is construed by implication to preclude the legislature from exempting any other kind of taxable property.¹ Under such provisions, a law which indirectly produces an exemption of property not enumerated is equally as invalid and void as one that expressly does so.² However, the fact that the state constitution enumerates subjects of tax exemptions does not affect the power of the legislature to exempt government securities or property from taxation although not specifically named in the constitutional enumeration of permissible tax exemptions,³ but these cases rest upon exceptional principles upon which the doctrine of implied exemptions of public property and public securities from taxation rest.⁴ The legislature may also exclude certain property from taxation when the expense of assessment and collection would exceed the revenue generated from the tax.⁵

There are a few jurisdictions in which, contrary to the rule of lack of legislative power to create additional exemptions, the viewpoint has been taken or expressed that where the state constitution enumerates property, purposes, or uses which are or may be exempted from taxation, the legislature does not lack power to exempt from taxation items additional to those specified in the constitution.⁶

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Footnotes

- 1 [Recreation Centers of Sun City, Inc. v. Maricopa County](#), 162 Ariz. 281, 782 P.2d 1174 (1989); [Taylor v. Finch](#), 288 Ark. 50, 701 S.W.2d 377 (1986); [Mesa Verde Co. v. Montezuma County Bd. of Equalization](#), 898 P.2d 1 (Colo. 1995); [Colding v. Herzog](#), 467 So. 2d 980 (Fla. 1985); [Chicago Bar Ass'n v. Department of Revenue](#), 163 Ill. 2d 290, 206 Ill. Dec. 113, 644 N.E.2d 1166, 96 Ed. Law Rep. 1032 (1994); [Wooden v. Louisiana Tax Com'n](#), 650 So. 2d 1157 (La. 1995); [St. Charles County v. Curators of University of Missouri](#), 25 S.W.3d 159 (Mo. 2000); [Independent School Dist. No. 9 of Tulsa County v. Glass](#), 1982 OK 2, 639 P.2d 1233, 2 Ed. Law Rep. 579 (Okla. 1982); [Clearfield Bituminous Coal Corp. v. Thomas](#), 336 Pa. 572, 9 A.2d 727, 126 A.L.R. 716 (1939).
- 2 [§ 216](#).
- 3 [Foster v. Roberts](#), 142 Tenn. 350, 219 S.W. 729, 9 A.L.R. 431 (1920).
- 4 [§§ 242 to 257](#).
- 5 [Colding v. Herzog](#), 467 So. 2d 980 (Fla. 1985).
- 6 [State v. Alabama Educational Foundation](#), 231 Ala. 11, 163 So. 527 (1935); [Woman's Club of Topeka v. Shawnee County](#), 253 Kan. 175, 853 P.2d 1157 (1993); [Reed v. Bjornson](#), 191 Minn. 254, 253 N.W. 102 (1934); [Town of Secaucus v. Hudson County Bd. of Taxation](#), 133 N.J. 482, 628 A.2d 288, 84 Ed. Law Rep. 725 (1993); [Egan Independent Consol. School Dist. No. 1 of Moody County v. Minnehaha County](#), 65 S.D. 32, 270 N.W. 527, 108 A.L.R. 572 (1936).

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Part Four. Exemptions from Taxation

XIV. In General; Creation and Validity of Exemptions

A. In General

§ 216. State constitutional limitations on legislative power—Equality and uniformity

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2289, 2292

Many of the state constitutions contain express requirements of equality and uniformity or proportionality. In these states, according to one view, the legislature is bound to tax all property within its jurisdiction and therefore cannot grant any exemptions unless the power to do so is expressly reserved in the constitution,¹ but this rule is not enforced with literal exactness² as, for example, it has been stated that the rule of uniformity does not forbid the creation of reasonable exemptions in furtherance of the public good.³ In most jurisdictions, the requirement is construed as meaning merely that all property of the same class must be taxed at the same rate, and not as prohibiting exemptions with respect to particular classes of property,⁴ provided that such exemption is founded on some rational basis.⁵

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Footnotes

- 1 [People v. Eddy](#), 43 Cal. 331, 1872 WL 1167 (1872); [State ex rel. Tieman v. City of Indianapolis](#), 69 Ind. 375, 1879 WL 5762 (1879); [Commonwealth v. MacKibben](#), 90 Ky. 384, 12 Ky. L. Rptr. 474, 14 S.W. 372 (1890); [Wells v. Hyattsville Com'rs](#), 77 Md. 125, 26 A. 357 (1893); [White v. Smith](#), 189 Pa. 222, 42 A. 125 (1899); [State v. Parmenter](#), 50 Wash. 164, 96 P. 1047 (1908).
- 2 [Love v. Silverthorn](#), 1940 OK 103, 187 Okla. 114, 101 P.2d 254, 129 A.L.R. 676 (1940).
- 3 [Williams v. Mayor and City Council of Baltimore](#), 289 U.S. 36, 53 S. Ct. 431, 77 L. Ed. 1015 (1933).
- 4 [State v. Alabama Fuel & Iron Co.](#), 188 Ala. 487, 66 So. 169 (1914); [Kansas Enterprises, Inc. v. Frantz](#), 269 Kan. 436, 6 P.3d 857 (2000); [City of Springfield v. Board of Assessors of Granville](#), 378 Mass. 159, 390 N.E.2d 713 (1979); [W. A. Foote Memorial Hospital, Inc. v. Kelley](#), 390 Mich. 193, 211 N.W.2d 649

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(1973); *Metropolitan Sports Facilities Com'n v. County of Hennepin*, 478 N.W.2d 487 (Minn. 1991); *Adams v. Yazoo & M. V. R. Co.*, 77 Miss. 194, 24 So. 317 (1898); *MAPCO Ammonia Pipeline, Inc. v. State Bd. of Equalization and Assessment*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Opinion of the Justices*, 144 N.H. 374, 746 A.2d 981 (1999); *General Motors Corp. v. City of Linden*, 150 N.J. 522, 696 A.2d 683 (1997); *Mathias v. Department of Revenue, State of Or.*, 312 Or. 50, 817 P.2d 272 (1991); *Duke Power Co. v. Bell*, 156 S.C. 299, 152 S.E. 865 (1930); *State ex rel. Ft. Howard Paper Co. v. State Lake Dist. Bd. of Review*, 82 Wis. 2d 491, 263 N.W.2d 178 (1978).

Hamilton v. Wilson, 61 Kan. 511, 59 P. 1069 (1900); *City of Springfield v. Board of Assessors of Granville*, 378 Mass. 159, 390 N.E.2d 713 (1979); *Metropolitan Sports Facilities Com'n v. County of Hennepin*, 478 N.W.2d 487 (Minn. 1991); *MAPCO Ammonia Pipeline, Inc. v. State Bd. of Equalization and Assessment*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Opinion of the Justices*, 144 N.H. 374, 746 A.2d 981 (1999); *Clark v. City of Cincinnati*, 99 Ohio App. 152, 58 Ohio Op. 265, 131 N.E.2d 599 (1st Dist. Hamilton County 1954), judgment aff'd, 163 Ohio St. 532, 56 Ohio Op. 438, 127 N.E.2d 363 (1955); *State ex rel. Ft. Howard Paper Co. v. State Lake Dist. Bd. of Review*, 82 Wis. 2d 491, 263 N.W.2d 178 (1978).

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Part Four. Exemptions from Taxation


XIV. In General; Creation and Validity of Exemptions

A. In General

§ 217. State constitutional limitations on legislative power—Exemptions to avoid double taxation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2290](#), [2292](#)

The constitutional requirement that all property must be taxed is satisfied by a method through which all wealth in the state is taxed once and does not compel the legislature to assess the same property in different ways or to different persons even when it is within its constitutional power to do so.¹ Accordingly, a statute which exempts from taxation the stock of a corporation the property of which is taxed, or exempts the property when the stock is taxed, is clearly constitutional.²

With respect to the taxation of credits, or of evidences of indebtedness, the practice is not uniform. It is held in some jurisdictions that credits may be exempted from taxation altogether since it is clearly demonstrable that the total wealth of a state may be once taxed without the taxation of credits in any form.³ Also, it is generally conceded that a statute which, in ascertaining the amount of credits of a taxpayer to be taxed to him or her, allows a deduction of the debts owed by him or her is unobjectionable;⁴ but the deduction of debts from cash in hand or property in the possession of the taxpayer is not commonly permitted in states in which the taxation of all property at a uniform rate is required.⁵

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Footnotes

¹ [State v. Parmenter](#), 50 Wash. 164, 96 P. 1047 (1908).

² [City and County of Denver v. Hobbs' Estate](#), 58 Colo. 220, 144 P. 874 (1914); [People's Loan & Homestead Ass'n of Joliet v. Keith](#), 153 Ill. 609, 39 N.E. 1072 (1894); [St. Ledger v. Com., Revenue Cabinet](#), 942 S.W.2d

893 (Ky. 1997), as modified on denial of reh'g, (Apr. 24, 1997); [State v. Parmenter](#), 50 Wash. 164, 96 P. 1047 (1908).

3 [State v. Parmenter](#), 50 Wash. 164, 96 P. 1047 (1908).

4 [People's Loan & Homestead Ass'n of Joliet v. Keith](#), 153 Ill. 609, 39 N.E. 1072 (1894); [Stumpf v. Storz](#), 156 Mich. 228, 120 N.W. 618 (1909); [Treasurer of Fayette County v. People's & Drovers' Bank](#), 47 Ohio St. 503, 25 N.E. 697 (1890).

5 [Treasurer of Fayette County v. People's & Drovers' Bank](#), 47 Ohio St. 503, 25 N.E. 697 (1890).

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Part Four. Exemptions from Taxation

XIV. In General; Creation and Validity of Exemptions

A. In General

§ 218. Transfer of exemptions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2358

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[Comment Note: Availability of tax exemption to property held on lease from exempt owner, 54 A.L.R.3d 402](#)

An exemption from taxation is a personal privilege which cannot be assigned or transferred by the person to whom it is granted unless the consent of the legislature is given in clear and unmistakable terms.¹ In the absence of any clear expression of intent to that effect in the legislative grant of an exemption or immunity from taxation, the exemption or immunity does not attach to or follow the property of the person in whose favor it is given when title passes to another.² Exemption from taxation granted to a person or corporation by the legislature will not, therefore, pass by a conveyance of all the property and franchises, or rights, powers, and privileges, of such person or corporation either by voluntary grant or sale³ or by judicial sale or a sale pursuant to judicial proceedings⁴ or by lease.⁵

CUMULATIVE SUPPLEMENT

Cases:

Tenant was automatically exempted from paying ad valorem taxes on land it leased at city's airport, since lease was entered under municipal airport law provision governing contracts and leases for airports owned by municipalities, and during period of lease, property was being used for commercial purposes. [Miss. Code Ann. § 61-5-11](#). [G4, LLC v. Pearl River County Board of Supervisors](#), 289 So. 3d 283 (Miss. 2020).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Fink v. Board of Com'rs of Muskogee County](#), 248 U.S. 399, 39 S. Ct. 128, 63 L. Ed. 324 (1919); [Antilles Industries, Inc. v. Government of Virgin Islands](#), 529 F.2d 605 (3d Cir. 1976); [Snow v. Dixon](#), 66 Ill. 2d 443, 6 Ill. Dec. 230, 362 N.E.2d 1052 (1977); [State ex rel. Wine v. Keokuk & W.R. Co.](#), 99 Mo. 30, 12 S.W. 290 (1889), [aff'd](#), 152 U.S. 301, 14 S. Ct. 592, 38 L. Ed. 450 (1894); [Roger Williams General Hosp. v. Littler](#), 566 A.2d 948 (R.I. 1989).
- 2 [Memphis & L.R.R. Co. v. Berry](#), 112 U.S. 609, 5 S. Ct. 299, 28 L. Ed. 837 (1884); [Snow v. Dixon](#), 66 Ill. 2d 443, 6 Ill. Dec. 230, 362 N.E.2d 1052 (1977).
- 3 [Wright v. Georgia Railroad & Banking Co](#), 216 U.S. 420, 30 S. Ct. 242, 54 L. Ed. 544 (1910); [Snow v. Dixon](#), 66 Ill. 2d 443, 6 Ill. Dec. 230, 362 N.E.2d 1052 (1977); [Cummins Engine Co., Inc. v. Thomas](#), 267 S.C. 521, 230 S.E.2d 217 (1976).
- 4 [Mercantile Bank v. State of Tennessee](#), 161 U.S. 161, 16 S. Ct. 461, 40 L. Ed. 656 (1896); [Trask v. Maguire](#), 85 U.S. 391, 21 L. Ed. 938, 1873 WL 15982 (1873).
- 5 [Morris Canal & Banking Co v. Baird](#), 239 U.S. 126, 36 S. Ct. 28, 60 L. Ed. 177 (1915); [Canaveral Port Authority v. Department of Revenue](#), 690 So. 2d 1226 (Fla. 1996); [Delta Air Lines, Inc. v. Coleman](#), 219 Ga. 12, 131 S.E.2d 768 (1963); [Roger Williams General Hosp. v. Littler](#), 566 A.2d 948 (R.I. 1989).

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Part Four. Exemptions from Taxation

XIV. In General; Creation and Validity of Exemptions

A. In General

§ 219. Duration of exemption

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2308

A tax exemption may be so granted as to be perpetual in character and beyond legislative interference,¹ or it may be partial in that it is stipulated to last for a specified term of years² or in that it is to last until a certain event happens.³ It has been held that exemption of property from taxation for a specified number of years is equivalent to an express power to tax after that period.⁴

If an exemption is not based upon a legal consideration but is given as a mere gratuity, it is revocable at any time.⁵ Generally, a taxpayer has no vested right in the continued existence of a taxing statute.⁶ The legislature has unquestioned authority to repeal prior tax exemption statutes.⁷

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Footnotes

- ¹ [Rees v. City of Watertown](#), 86 U.S. 107, 22 L. Ed. 72, 1873 WL 16060 (1873).
- ² [Bailey v. Magwire](#), 89 U.S. 215, 22 L. Ed. 850, 1874 WL 17411 (1874); [City of Rochester v. Rochester Ry. Co.](#), 182 N.Y. 99, 74 N.E. 953 (1905), [aff'd](#), 205 U.S. 236, 27 S. Ct. 469, 51 L. Ed. 784 (1907).
- ³ [Winona & St. P. Land Co. v. State of Minnesota](#), 159 U.S. 526, 16 S. Ct. 83, 40 L. Ed. 247 (1895); [Jackson County v. Sioux City & St. P.R. Co.](#), 82 Minn. 158, 84 N.W. 794 (1901).
- ⁴ [Memphis & C.R. Co. v. Gaines](#), 97 U.S. 697, 24 L. Ed. 1091, 1878 WL 18385 (1878).
- ⁵ [Application of Skidmore](#), 75 Ill. 2d 33, 25 Ill. Dec. 634, 387 N.E.2d 290 (1979); [Miller v. Board of County Commissioners of Natrona County](#), 79 Wyo. 502, 337 P.2d 262 (1959).

- 6 Application of Skidmore, 75 Ill. 2d 33, 25 Ill. Dec. 634, 387 N.E.2d 290 (1979).
7 Daytona Beach Racing and Recreational Facilities Dist. v. Volusia County, 372 So. 2d 419 (Fla. 1979);
Opinion of the Justices, 365 Mass. 665, 313 N.E.2d 882 (1974).

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Part Four. Exemptions from Taxation

XIV. In General; Creation and Validity of Exemptions

A. In General

§ 220. Prospective and retrospective operation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2292

The general rule of law that, unless a contrary intention is expressed, statutes are treated as intended to operate prospectively, and not retrospectively, applies to statutes granting exemptions from taxation.¹ Accordingly, a statute creating an exemption, in the absence of an express provision otherwise, will not affect taxes which are due and payable at the time when the law goes into effect,² nor will it affect taxes which are a lien at the time when it goes into effect even if such taxes are not yet due and payable.³ Similarly, a statute terminating an exemption will not apply retroactively without an express statement to that effect.⁴

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Footnotes

- ¹ [Chadwick v. City of Crawfordsville](#), 216 Ind. 399, 24 N.E.2d 937, 129 A.L.R. 469 (1940).
- ² [State ex rel. Marion County v. Certain Lands](#), 40 Ark. 35, 1882 WL 1561 (1882); [Appeal Tax Court of Baltimore City v. Baltimore Academy of Visitation](#), 50 Md. 437, 1879 WL 6291 (1879); [People ex rel. Jones v. Feitner](#), 157 N.Y. 363, 51 N.E. 1002 (1898).
- ³ [People ex rel. McCullough v. Deutsche Evangelisch Lutherische Jehovah Gemeinde, etc. \(State Report Title: People v. Deutsche Evangelisch Lutherische Jehovah Gemeinde Ungeaenderter Augsburgischer Confession\)](#), 249 Ill. 132, 94 N.E. 162 (1911).
- ⁴ [Hyland Hills Park & Recreation Dist., Adams County v. Denver and Rio Grande Western R. Co.](#), 864 P.2d 569 (Colo. 1993).

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XIV. In General; Creation and Validity of Exemptions

A. In General

§ 221. Purchase by exempt organization of nonexempt property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2187](#)

A.L.R. Library

[Tax exemption of real property as affected by time of acquisition of title by private owner entitled to exemption, 54 A.L.R.2d 996](#)

Real property acquired by an exempt owner during a tax year, prior to the time when taxes for that year have become an effective lien against the property, has been held exempt from taxes for the current year,¹ but where title to property was not acquired by an exempt landowner until after the date upon which current taxes became a lien thereon, the property has generally been held subject to such taxes.² In some cases, it has been determined that the assessment date is the determining factor so that property acquired by an exempt organization after the assessment of taxes, but before such taxes became a lien against the property, has been held subject to current taxes.³ Some courts have indicated that the date of the actual levy of the tax determines the exempt status of a new owner, and transfers prior to such date have been held to involve no liability for current taxes.⁴

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Footnotes

- 1 Salvation Army v. Barnett, 80 S.D. 379, 124 N.W.2d 365 (1963).
- 2 People ex rel. McCullough v. Logan Square Presbyterian Church, 249 Ill. 9, 94 N.E. 155 (1911); Jefferson Post No. 15, Am. Legion, Dept. of Ky. v. City of Louisville, 280 S.W.2d 706, 54 A.L.R.2d 992 (Ky. 1955); St. Louis Provident Ass'n v. Gruner, 355 Mo. 1030, 199 S.W.2d 409 (1947).
- 3 Application of Suffern Boys School, 267 A.D. 919, 47 N.Y.S.2d 192 (2d Dep't 1944); Board of Com'rs of Comanche County v. Central Baptist Church, 1929 OK 166, 136 Okla. 99, 276 P. 726, 63 A.L.R. 1327 (1929); City of Philadelphia v. Pennsylvania Institution for the Instruction of the Blind, 214 Pa. 138, 63 A. 420 (1906).
- 4 Trinity Evangelical Lutheran Church of Kansas City v. Board of Com'rs of Wyandotte County, 118 Kan. 742, 236 P. 809 (1925); Village of Hibbing v. Commissioner of Taxation, 217 Minn. 528, 14 N.W.2d 923, 156 A.L.R. 1294 (1944); American Province of The Servants of Mary Real Estate Corp. v. Douglas County, 147 Neb. 485, 23 N.W.2d 714 (1946); Appeal of Title Services, Inc., 433 Pa. 535, 252 A.2d 585 (1969); McFarland v. Keenan, 77 S.D. 39, 84 N.W.2d 884 (1957).

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XIV. In General; Creation and Validity of Exemptions


B. Exemption Granted by Contract

§ 222. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2179

West's Key Number Digest, [Taxation](#)  2290, 2299

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 85](#) (Complaint, petition, or declaration—Allegation—Legislative act as basis of exemption)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 89](#) (Answer—Defense—Invalidity of agreement creating exemption)

Unless limited from so doing by the local constitution, the State may enter into a binding contract to exempt from taxation, forever or for a definite term, property which in its discretion it could have exempted from taxation by a general legislative grant of immunity.¹ The power of the State to tax property in specific instances may be surrendered by one legislative body so as to bind succeeding legislatures.²

In the absence of special restrictions in its constitution, a State may make a valid contract with a private corporation for its exemption from taxation, complete or partial, for a limited time or perpetually.³ When it does so explicitly and upon consideration in a corporate charter, the provision for tax immunity is as binding as any other part of the grant.⁴

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Footnotes

- 1 Choate v. Trapp, 224 U.S. 665, 32 S. Ct. 565, 56 L. Ed. 941 (1912); Ware Lodge No. 435, A.F. & A.M. v. Harper, 236 Ala. 334, 182 So. 59 (1938); Snow v. Dixon, 66 Ill. 2d 443, 6 Ill. Dec. 230, 362 N.E.2d 1052 (1977); Opinion of the Justices, 365 Mass. 665, 313 N.E.2d 882 (1974); Long Island Power Authority v. Shoreham Wading River Cent. School Dist., 88 N.Y.2d 503, 647 N.Y.S.2d 135, 670 N.E.2d 419 (1996); State v. Pioneer Mills, 1926 OK 652, 122 Okla. 6, 250 P. 120 (1926); Brattleboro Retreat v. Town of Brattleboro, 106 Vt. 228, 173 A. 209 (1934); Whiting v. Town of West Point, 88 Va. 905, 14 S.E. 698 (1892).
- 2 Hoge v. Richmond & D.R. Co., 99 U.S. 348, 25 L. Ed. 303, 1878 WL 18228 (1878); Opinion of the Justices, 365 Mass. 665, 313 N.E.2d 882 (1974); Lake Drummond Canal & Water Co. v. Commonwealth, 103 Va. 337, 49 S.E. 506 (1905).
- 3 Pulaski County v. Jacuzzi Bros. Div., 332 Ark. 91, 964 S.W.2d 788 (1998).
- 4 Central of Georgia Ry. Co. v. Wright, 248 U.S. 525, 39 S. Ct. 181, 63 L. Ed. 401 (1919), on reh'g, 250 U.S. 519, 40 S. Ct. 1, 63 L. Ed. 1123 (1919); Silverbrook Cemetery Co. v. Department of Finance of New Castle County, 449 A.2d 241 (Del. 1982); Snow v. Dixon, 66 Ill. 2d 443, 6 Ill. Dec. 230, 362 N.E.2d 1052 (1977).

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XIV. In General; Creation and Validity of Exemptions

B. Exemption Granted by Contract

§ 223. Effect of limitations upon general power to grant tax exemptions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2290

No contract can arise out of an unconstitutional statute. If the legislature of a state has no power to grant an exemption from taxation, a charter granted by the State purporting to contain such exemption is not a contract which is entitled to protection by the courts or by the constitutional guaranty against impairment of contract.¹ Thus, also, if the constitution of a state prohibits the legislature from granting any irrevocable exemption from taxation, a charter exempting the property of the grantee from taxation will not be protected from subsequent revocation.²

Although the legislature can make no binding contract for an exemption from taxation where the constitution limits or restricts its power to enact legislation granting tax exemptions, when once it has made a valid and binding contract of exemption, that contract cannot be affected by a subsequent constitutional amendment limiting the power of the legislature in this respect.³ A constitutional amendment which expressly or impliedly prohibits the legislature from granting an exemption from taxation to a private corporation cannot affect the validity of a charter containing such exemption granted prior to the adoption of the constitutional amendment⁴ although such an amendment does operate to repeal every exemption previously granted by charter or special law which does not constitute an irrepealable contract.⁵

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Footnotes

- 1 Williams v. Mayor and City Council of Baltimore, 289 U.S. 36, 53 S. Ct. 431, 77 L. Ed. 1015 (1933); Tarver v. City of Dalton, 134 Ga. 462, 67 S.E. 929 (1910); South Covington & Cincinnati St. Ry. Co. v. Town of Bellevue, 105 Ky. 283, 20 Ky. L. Rptr. 1184, 49 S.W. 23 (1899).
- 2 Gulf & S.I.R. Co. v. Hewes, 183 U.S. 66, 22 S. Ct. 26, 46 L. Ed. 86 (1901); Yazoo & M.V.R. Co. v. Adams, 180 U.S. 1, 21 S. Ct. 240, 45 L. Ed. 395 (1901).
- 3 Central of Georgia Ry. Co. v. Wright, 248 U.S. 525, 39 S. Ct. 181, 63 L. Ed. 401 (1919), *on reh'g*, 250 U.S. 519, 40 S. Ct. 1, 63 L. Ed. 1123 (1919); Memphis & C.R. Co. v. Gaines, 97 U.S. 697, 24 L. Ed. 1091, 1878 WL 18385 (1878); Brown University v. Granger, 19 R.I. 704, 36 A. 720 (1897).
- 4 Home of the Friendless v. Rouse, 75 U.S. 430, 19 L. Ed. 495, 1869 WL 11615 (1869); Knoxville & O.R. Co. v. Harris, 99 Tenn. 684, 43 S.W. 115 (1897).
- 5 Trask v. Maguire, 85 U.S. 391, 21 L. Ed. 938, 1873 WL 15982 (1873).

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XIV. In General; Creation and Validity of Exemptions

B. Exemption Granted by Contract

§ 224. Granting of licenses or franchises

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2290

Contractual elements may enter into the granting of licenses¹ or charter privileges,² and where this is the case, the rule forbidding impairment of contracts within constitutional limitations will be enforced.³

While a State, or a municipal corporation acting under its authority, may deprive itself by contract of the power to exercise a right conferred by law to collect taxes or license fees, yet at the same time, the principle has been established that such deprivation can follow only when the State or city has precluded itself by the use of clear and unequivocal terms,⁴ for exemptions of this character are to be strictly construed,⁵ and, when conformed to the general rule of taxation, are never to be presumed.⁶

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Footnotes

- ¹ American Smelting & Refining Co. v. People of State of Colorado, 204 U.S. 103, 27 S. Ct. 198, 51 L. Ed. 393 (1907); Stein v. City of Mobile, 49 Ala. 362, 1873 WL 840 (1873).
- ² Citizens' Bank of Louisiana v. Parker, 192 U.S. 73, 24 S. Ct. 181, 48 L. Ed. 346 (1904).
- ³ Wright v. Louisville & N.R. Co., 236 U.S. 687, 35 S. Ct. 475, 59 L. Ed. 788 (1915); Stein v. City of Mobile, 49 Ala. 362, 1873 WL 840 (1873).
- ⁴ City of St. Louis v. United Rys. Co., 210 U.S. 266, 28 S. Ct. 630, 52 L. Ed. 1054 (1908); Denver Center for the Performing Arts v. Briggs, 696 P.2d 299 (Colo. 1985).
- ⁵ Berryman v. Board of Trustees of Whitman College, 222 U.S. 334, 32 S. Ct. 147, 56 L. Ed. 225 (1912); Denver Center for the Performing Arts v. Briggs, 696 P.2d 299 (Colo. 1985).

6 [Wiggins Ferry Co. v. City of East St. Louis, 107 U.S. 365, 2 S. Ct. 257, 27 L. Ed. 419 \(1883\).](#)

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XIV. In General; Creation and Validity of Exemptions

B. Exemption Granted by Contract

§ 225. Contractual requirements

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2293

Contracts of exemption are subject to the general rules of law governing contracts and, to be binding upon the state and protected from impairment, must contain the essential elements of other contracts, such, for example, as a valid legal and sufficient¹ consideration.² If there is no consideration for the exemption granted, it is deemed to be a mere bounty or privilege and revocable as such at the pleasure of the legislature.³ An exemption from taxation, if not founded upon any consideration, express or implied, is not a contract but is a gratuity and may be rescinded at any time.⁴

When a corporation has accepted a charter containing no exemption from taxation and an exemption is granted to it by a subsequent legislative enactment which imposes no additional burdens on the corporation, there is no consideration for the grant of exemption, and it does not constitute a contract.⁵ A grant of an exemption although clearly made is not necessarily a contract.⁶ General statutes exempting corporations engaged in a certain business from taxation,⁷ or providing a particular method for the taxation of corporations of a certain class,⁸ have none of the elements of contractual obligations which prevent their subsequent repeal.

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Footnotes

¹ [English v. Richardson](#), 224 U.S. 680, 32 S. Ct. 571, 56 L. Ed. 949 (1912); [Gleason v. Wood](#), 224 U.S. 679, 32 S. Ct. 571, 56 L. Ed. 947 (1912).

- 2 Stanislaus County v. San Joaquin & King's River Canal & Irrigation Co., 192 U.S. 201, 24 S. Ct. 241, 48 L. Ed. 406 (1904).
As to the formation of contracts, generally, see Am. Jur. 2d, Contracts §§ 19 to 221.
- 3 Choate v. Trapp, 224 U.S. 665, 32 S. Ct. 565, 56 L. Ed. 941 (1912); City of Rochester v. Rochester Ry. Co., 182 N.Y. 99, 74 N.E. 953 (1905), *aff'd*, 205 U.S. 236, 27 S. Ct. 469, 51 L. Ed. 784 (1907); Pennsylvania R. Co. v. Bowers, 124 Pa. 183, 16 A. 836 (1889).
- 4 Grand Lodge of State of Louisiana v. City of New Orleans, 166 U.S. 143, 17 S. Ct. 523, 41 L. Ed. 951 (1897); Monaghan v. Lewis, 21 Del. 218, 5 Penne. 218, 59 A. 948 (1905).
- 5 Seton Hall College v. Village of South Orange, 242 U.S. 100, 37 S. Ct. 54, 61 L. Ed. 170 (1916).
- 6 West Wisconsin R. Co. v. Board of Sup'rs Trempealeau County, 93 U.S. 595, 23 L. Ed. 814, 1876 WL 19694 (1876).
- 7 Wisconsin & M. Ry. Co. v. Powers, 191 U.S. 379, 24 S. Ct. 107, 48 L. Ed. 229 (1903); Grand Lodge of State of Louisiana v. City of New Orleans, 166 U.S. 143, 17 S. Ct. 523, 41 L. Ed. 951 (1897); Pratt Institute v. City of New York, 183 N.Y. 151, 75 N.E. 1119 (1905).
- 8 Holly Springs Sav. & Ins. Co. v. Marshall County Sup'rs, 52 Miss. 281, 1876 WL 5186 (1876).

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XIV. In General; Creation and Validity of Exemptions

B. Exemption Granted by Contract

§ 226. Protection from impairment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

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A contract of exemption from taxation based upon an adequate consideration, such as exemption provisions contained in charters granted to corporations without reservation of any power of amendment, alteration, or repeal, is within the protection of the provision of the United States Constitution¹ that no State may pass any law impairing the obligation of contracts.² Any subsequent law purporting to impose a tax within the class embraced thereby is for this reason void as to such contract.³ The revenue system of a state must yield to a contract which the State has lawfully made and the obligation of which, by the constitution, it is forbidden to impair.⁴ The amount of the impairment of the obligation is immaterial; if there is any, it is sufficient to activate the constitutional prohibition.⁵ The constitutional prohibition applies alike to both executory and executed contracts.⁶

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Footnotes

- 1 U.S. Const. Art. I, § 10.
- 2 [Macallen Co. v. Com. of Mass.](#), 279 U.S. 620, 49 S. Ct. 432, 73 L. Ed. 874, 65 A.L.R. 866 (1929); [Application of Skidmore](#), 75 Ill. 2d 33, 25 Ill. Dec. 634, 387 N.E.2d 290 (1979); [Eyers Woolen Co. v. Town of Gilsum](#), 84 N.H. 1, 146 A. 511, 64 A.L.R. 1196 (1929); [Hancock v. State](#), 62 N.J.L. 289, 41 A. 846 (N.J. Ct. Err. & App. 1898); [Knoxville & O.R. Co. v. Harris](#), 99 Tenn. 684, 43 S.W. 115 (1897).
As to the contract clause, see [Am. Jur. 2d, Constitutional Law](#) §§ 753 to 789.
- 3 [Pearsall v. Great Northern Ry. Co.](#), 161 U.S. 646, 16 S. Ct. 705, 40 L. Ed. 838 (1896); [Ladd v. City of Portland](#), 32 Or. 271, 51 P. 654 (1898).
- 4 [Poindexter v. Greenhow](#), 114 U.S. 270, 5 S. Ct. 903, 29 L. Ed. 185 (1885).

5 [Farrington v. State of Tennessee, 95 U.S. 679, 24 L. Ed. 558, 1877 WL 18633 \(1877\).](#)

6 [Farrington v. State of Tennessee, 95 U.S. 679, 24 L. Ed. 558, 1877 WL 18633 \(1877\).](#)

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State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Four. Exemptions from Taxation

XIV. In General; Creation and Validity of Exemptions

B. Exemption Granted by Contract

§ 227. Federal determination of question of impairment

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West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2290

A decision of a state court that the grant of an exemption from taxation did not extend to certain property raises no federal question, for in such case, there is no law subsequent to the contract which can be alleged to have impaired its obligation.¹ On the other hand, whenever it is claimed that the law of a state impairs a previously existing contract, contained in the charter of a corporation, exempting the corporation from taxation, and a decision of the state court is against the exemption claimed, the United States Supreme Court has jurisdiction to re-examine such decision.²

A decision of the highest state court that the state statute which is claimed to create a contract is valid will be followed by the supreme court in determining whether any contract and obligations have been impaired by subsequent legislation.³ If the exemption granted to a corporation was, by virtue of the constitution of the state and the decisions of its courts, a repealable one, whether the subsequent statute under which it is claimed that the property of the corporation is subject to taxation did in fact repeal the exemption is not a federal question.⁴

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Footnotes

- ¹ [St Paul, M & M R Co v. Todd County](#), 142 U.S. 282, 12 S. Ct. 281, 35 L. Ed. 1014 (1892).
- ² [Jetton v. University of the South](#), 208 U.S. 489, 28 S. Ct. 375, 52 L. Ed. 584 (1908).
- ³ [Powers v. Detroit, G.H. & M. Ry. Co.](#), 201 U.S. 543, 26 S. Ct. 556, 50 L. Ed. 860 (1906).
- ⁴ [Wicomico County Com'rs v. Bancroft](#), 203 U.S. 112, 27 S. Ct. 21, 51 L. Ed. 112 (1906).

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71 Am. Jur. 2d State and Local Taxation § 228

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Part Four. Exemptions from Taxation

XIV. In General; Creation and Validity of Exemptions

B. Exemption Granted by Contract

§ 228. Reservation of power to alter, amend, or repeal

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West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2290

The general rule is that the legislature cannot by any language create an irrevocable exemption from taxation by grant in a corporate charter.¹ Also, the elementary rule is that if at the time a corporation is chartered and given either a commutation or exemption from taxation, there exists a general statute reserving the legislative power to repeal, alter, or amend, then the exemption or commutation from taxation may be revoked without impairing the obligations of the contract because the reserved power deprives the contract of its irrevocable character and submits it to legislative control.² A like principle applies when the charter of the corporation is by its terms subject to amendment or repeal.³ The mere fact that immunity from taxation was granted for a designated period does not take the charter out of the power reserved in a general statute to repeal, alter, or amend all charters.⁴ However, a charter exempting a corporation from taxes so long as it has a specified amount of property in the state constitutes a contract which cannot be abrogated by the State and which is not subject to a general provision of the statutes making all charters subject to alteration, suspension, and repeal.⁵

Statutes granting an extension to corporate charters passed after the adoption of an act making all grants to corporations subject to amendment will be subject to that act although the original charters contained exemptions which were irrevocable.⁶ Power to amend the charter of a corporation by which it assumes a certain obligation in return for exemption from taxation does not include power to withdraw the exemption and leave the obligation in full force.⁷

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Footnotes

- 1 People of State of New York ex rel. Troy Union R. Co. v. Mealy, 254 U.S. 47, 41 S. Ct. 17, 65 L. Ed. 123 (1920); Opinion of the Justices, 365 Mass. 665, 313 N.E.2d 882 (1974); People ex rel. Cooper Union for Advancement of Science & Art v. Gass, 190 N.Y. 323, 83 N.E. 64 (1907); Appeal of Wagner Free Institute, 132 Pa. 612, 19 A. 297 (1890).
- 2 Seton Hall College v. Village of South Orange, 242 U.S. 100, 37 S. Ct. 54, 61 L. Ed. 170 (1916); Deposit Bank of Owensboro v. Daviess County, 102 Ky. 174, 19 Ky. L. Rptr. 248, 39 S.W. 1030 (1897), *aff'd*, 173 U.S. 663, 19 S. Ct. 875, 43 L. Ed. 850 (1899) *and aff'd*, 173 U.S. 662, 19 S. Ct. 875, 43 L. Ed. 850 (1899) *and aff'd*, 173 U.S. 636, 19 S. Ct. 530, 43 L. Ed. 840 (1899).
- 3 City of Louisville v. Bank of Louisville, 174 U.S. 439, 19 S. Ct. 753, 43 L. Ed. 1039 (1899); Appeal of Wagner Free Institute, 132 Pa. 612, 19 A. 297 (1890).
- 4 Citizens' Sav. Bank v. City of Owensboro, 173 U.S. 636, 19 S. Ct. 530, 43 L. Ed. 840 (1899).
- 5 State v. Heppenheimer, 58 N.J.L. 633, 34 A. 1061 (N.J. Ct. Err. & App. 1896).
- 6 Deposit Bank of Owensboro v. Daviess County, 102 Ky. 174, 19 Ky. L. Rptr. 248, 39 S.W. 1030 (1897), *aff'd*, 173 U.S. 663, 19 S. Ct. 875, 43 L. Ed. 850 (1899) *and aff'd*, 173 U.S. 662, 19 S. Ct. 875, 43 L. Ed. 850 (1899) *and aff'd*, 173 U.S. 636, 19 S. Ct. 530, 43 L. Ed. 840 (1899).
- 7 Stearns v. State of Minn., 179 U.S. 223, 21 S. Ct. 73, 45 L. Ed. 162 (1900).

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Part Four. Exemptions from Taxation

XIV. In General; Creation and Validity of Exemptions

C. Construction and Effect

§ 229. Generally

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West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2299 to 2302, 2309

When a statute purports to grant an exemption from taxation, a fundamental rule of construction is that the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption and in favor of the taxing authority¹ in the absence of expressed legislative intent that the exemption is to be construed otherwise.² Constitutional and statutory exemptions from general property taxation are strictly construed so as not to be enlarged or extended beyond the plain meaning of the language employed³ because the reasonable presumption is that the State has granted in express terms all that it intended to grant.⁴

An exemption from taxation must be clearly defined and founded upon plain language, without doubt or ambiguity.⁵ Exemptions from taxation must be express,⁶ and no exemption from taxation will be allowed unless the exemption is clearly and distinctly intended by the legislature⁷ or expressly and clearly conferred in plain terms.⁸ Tax exemptions may not be created⁹ or extended by implication.¹⁰ Whenever doubt arises, it is to be resolved against the exemption,¹¹ and unlike most tax statutes, ambiguous provisions related to exemptions are construed strongly against the taxpayer.¹² However, the rule that tax exemptions are to be strictly construed should not force the conclusion that the legislature intended other than that which is expressed in plain language if the exemption as expressed in plain language is reasonable.¹³ Also, tax exemptions will not be given the narrowest possible reading or an unreasonable construction.¹⁴

There is substantial authority that the rule that tax exemption statutes are to be construed strictly is applied less rigorously in the case of educational institutions than with respect to other exempt bodies.¹⁵

CUMULATIVE SUPPLEMENT

Cases:

Courts do not presume tax exemptions, but rather construe statutes according to the strict but reasonable rules of statutory construction, with ambiguities being given their narrowest possible reasonable construction. [Aspen Park, Inc. v. Bonneville County](#), 165 Idaho 319, 444 P.3d 891 (2019).

A constitutional provision authorizing legislative exemption of property from taxation is strictly construed and nothing can be exempted that does not fall within its terms; but rational construction within the terms used is required as well as permitted. [United Hosp. Center, Inc. v. Romano](#), 758 S.E.2d 240 (W. Va. 2014).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Hale v. Iowa State Board of Assessment and Review](#), 302 U.S. 95, 58 S. Ct. 102, 82 L. Ed. 72 (1937); [U.S. v. Montgomery County, Md.](#), 761 F.2d 998 (4th Cir. 1985); [Surtees v. Carlton Cove, Inc.](#), 974 So. 2d 1013 (Ala. Civ. App. 2007); [Miller County v. Opportunities, Inc.](#), 334 Ark. 88, 971 S.W.2d 781 (1998); [Batt v. City and County of San Francisco](#), 184 Cal. App. 4th 163, 109 Cal. Rptr. 3d 129 (1st Dist. 2010); [St. Joseph's Living Center, Inc. v. Town of Windham](#), 290 Conn. 695, 966 A.2d 188 (2009); [Boca Airport, Inc. v. Florida Dept. of Revenue](#), 56 So. 3d 140 (Fla. 4th DCA 2011), review dismissed, 63 So. 3d 748 (Fla. 2011); [Muscookee County Bd. of Tax Assessors v. Pace Industries, Inc.](#), 307 Ga. App. 532, 705 S.E.2d 678 (2011); [Matter of Fasi](#), 63 Haw. 624, 634 P.2d 98 (1981); [Housing Southwest, Inc. v. Washington County](#), 128 Idaho 335, 913 P.2d 68 (1996); [In re Skidmore](#), 2011 IL App (2d) 100730, 352 Ill. Dec. 300, 953 N.E.2d 981 (App. Ct. 2d Dist. 2011); [In re Goddard](#), 39 Kan. App. 2d 325, 180 P.3d 604 (2008); [Whitten Foundation v. Granger](#), 950 So. 2d 720 (La. Ct. App. 1st Cir. 2006), writ denied, 948 So. 2d 1080 (La. 2007); [Supervisor of Assessments of Baltimore County v. Keeler](#), 362 Md. 198, 764 A.2d 821 (2001); [Animal Rescue League of Boston v. Bourne's Assessors](#), 310 Mass. 330, 37 N.E.2d 1019, 138 A.L.R. 110 (1941); [Michigan United Conservation Clubs v. Lansing Tp.](#), 423 Mich. 661, 378 N.W.2d 737 (1985); [Crossroads Church of Prior Lake MN v. County of Dakota](#), 800 N.W.2d 608 (Minn. 2011); [Better Living Services, Inc. v. Bolivar County](#), 587 So. 2d 914 (Miss. 1991); [Conagra Poultry Co. v. Director of Revenue](#), 862 S.W.2d 915 (Mo. 1993); [Montana Bankers Ass'n v. Montana Dept. of Revenue](#), 177 Mont. 112, 580 P.2d 909 (1978); [Jim L. Shetakis Distributing Co., Inc. v. State, Dept. of Taxation](#), 108 Nev. 901, 839 P.2d 1315 (1992); [International Schools Services, Inc. v. West Windsor Tp.](#), 207 N.J. 3, 21 A.3d 1166 (2011); 108 Realty LLC v. Department of Housing Preservation and Development of City of New York, 83 A.D.3d 556, 923 N.Y.S.2d 50 (1st Dep't 2011); [In re Fayette Place LLC](#), 193 N.C. App. 744, 668 S.E.2d 354 (2008); [Peterson v. Heitkamp](#), 442 N.W.2d 219 (N.D. 1989); [Anderson/Maltbie Partnership v. Levin](#), 127 Ohio St. 3d 178, 2010-Ohio-4904, 937 N.E.2d 547, 261 Ed. Law Rep. 1066 (2010); [Fleet Credit Corp. v. Frazier](#), 726 A.2d 452 (R.I. 1999); [TNS Mills, Inc. v. South Carolina Dept. of Revenue](#), 331 S.C. 611, 503 S.E.2d 471 (1998); [Alpha Gamma Zeta House Ass'n v. Clay County Bd. of Equalization](#), 1998 SD 101, 583 N.W.2d 167 (S.D. 1998); [Tibbals Flooring Co. v. Huddleston](#), 891 S.W.2d 196 (Tenn. 1994); [Sturgis Air One, L.L.C. v. Harris County Appraisal Dist.](#), 351 S.W.3d 381 (Tex. App. Houston 14th Dist. 2011); [Hales Sand & Gravel, Inc. v. Audit Div. of State Tax Com'n of Utah](#), 842 P.2d 887, 20 U.C.C. Rep. Serv. 2d 136 (Utah 1992); [Ice Center of Washington West, Inc. v. Town of Waterbury](#), 183 Vt. 616, 2008 VT 37, 950 A.2d 464 (2008); [Tony P. Sellitti Const. Co. v. Caryl](#), 185 W. Va. 584, 408 S.E.2d 336 (1991).

- 2 Oakwood in Forest Hills, Inc. v. Tax Commission of City of New York, 30 A.D.2d 863, 293 N.Y.S.2d 58 (2d Dep't 1968), order aff'd, 23 N.Y.2d 949, 298 N.Y.S.2d 729, 246 N.E.2d 530 (1969); Brown University v. Granger, 19 R.I. 704, 36 A. 720 (1897).
- 3 Cedars of Lebanon Hospital v. Los Angeles County, 35 Cal. 2d 729, 221 P.2d 31, 15 A.L.R.2d 1045 (1950).
- 4 VanderWerp v. Plainfield Charter Tp., 278 Mich. App. 624, 752 N.W.2d 479 (2008).
- 5 City of St. Louis v. United Rys. Co., 210 U.S. 266, 28 S. Ct. 630, 52 L. Ed. 1054 (1908); In re Smith's Estate, 343 Mich. 291, 72 N.W.2d 287, 51 A.L.R.2d 847 (1955); Sandy Hill Corp. v. State Tax Commission, 61 A.D.2d 550, 403 N.Y.S.2d 332 (3d Dep't 1978); In re Estate of White, 25 Ohio St. 3d 355, 496 N.E.2d 888 (1986); Independent School Dist. No. 9 of Tulsa County v. Glass, 1982 OK 2, 639 P.2d 1233, 2 Ed. Law Rep. 579 (Okla. 1982); Harvey Coal & Coke Co. v. Dillon, 59 W. Va. 605, 53 S.E. 928 (1905); Wisconsin Elec. Power Co. v. Department of Revenue, 59 Wis. 2d 106, 207 N.W.2d 841 (1973).
- 6 Johnson v. Department of Revenue, 292 Or. 373, 639 P.2d 128, 2 Ed. Law Rep. 282 (1982).
- 7 Muscogee County Bd. of Tax Assessors v. Pace Industries, Inc., 307 Ga. App. 532, 705 S.E.2d 678 (2011).
- 8 City of Pinson v. Utilities Bd. of City of Oneonta, 986 So. 2d 367 (Ala. 2007) (clear and unambiguous terms); Sherwood Forest Country Club v. Litchfield, 998 So. 2d 56 (La. 2008), on reh'g in part, 6 So. 3d 141 (La. 2009); In re MCI WorldCom Network Services, Inc., 454 Mass. 635, 912 N.E.2d 920 (2009).
- 9 TracFone Wireless, Inc. v. Washington Dept. of Revenue, 170 Wash. 2d 273, 242 P.3d 810 (2010).
- 10 Xerox Corp. v. Wisconsin Dept. of Revenue, 321 Wis. 2d 181, 2009 WI App 113, 772 N.W.2d 677 (Ct. App. 2009).
- 11 Crim v. Phipps, 601 So. 2d 474 (Ala. 1992); Miller County v. Opportunities, Inc., 334 Ark. 88, 971 S.W.2d 781 (1998); In re Simpson's Estate, 43 Cal. 2d 594, 275 P.2d 467, 47 A.L.R.2d 991 (1954); McDonnell Douglas Corp. v. State Bd. of Equalization, 10 Cal. App. 4th 1413, 13 Cal. Rptr. 2d 399 (2d Dist. 1992); Lewiston Orchards Irr. Dist. v. Gilmore, 53 Idaho 377, 23 P.2d 720 (1933); City of Chicago v. Illinois Dept. of Revenue, 147 Ill. 2d 484, 168 Ill. Dec. 841, 590 N.E.2d 478 (1992); Indiana Dept. of State Revenue v. Bulkmatic Transport Co., 648 N.E.2d 1156 (Ind. 1995); Carroll Area Child Care Center, Inc. v. Carroll County Bd. of Review, 613 N.W.2d 252 (Iowa 2000); In re Genstler Eye Center & Clinic/Genstler Medical Care Facility, 40 Kan. App. 2d 411, 192 P.3d 666 (2008); Delta Air Lines, Inc. v. Com., Revenue Cabinet, 689 S.W.2d 14 (Ky. 1985); Humboldt Field Research Institute v. Town of Steuben, 2011 ME 130, 36 A.3d 873 (Me. 2011); Supervisor of Assessments of Baltimore County v. Keeler, 362 Md. 198, 764 A.2d 821 (2001); Better Living Services, Inc. v. Bolivar County, 587 So. 2d 914 (Miss. 1991); Jim L. Shetakis Distributing Co., Inc. v. State, Dept. of Taxation, 108 Nev. 901, 839 P.2d 1315 (1992); Mobil Oil Corp. v. Finance Adm'r of City of New York, 58 N.Y.2d 95, 459 N.Y.S.2d 566, 446 N.E.2d 130 (1983); Matter of North Carolina Inheritance Taxes, 303 N.C. 102, 277 S.E.2d 403 (1981); A. Schulman, Inc. v. Levin, 116 Ohio St. 3d 105, 2007-Ohio-5585, 876 N.E.2d 928 (2007); O'Reilly v. Fox Chapel Area School Dist., 521 Pa. 471, 555 A.2d 1288 (1989); Roger Williams General Hosp. v. Littler, 566 A.2d 948 (R.I. 1989); Tibbals Flooring Co. v. Huddleston, 891 S.W.2d 196 (Tenn. 1994); Ice Center of Washington West, Inc. v. Town of Waterbury, 183 Vt. 616, 2008 VT 37, 950 A.2d 464 (2008); Virginia Baptist Homes, Inc. v. Botetourt County, 276 Va. 656, 668 S.E.2d 119 (2008); In re Sehome Park Care Center, Inc., 127 Wash. 2d 774, 903 P.2d 443 (1995); In re Northview Services, Inc., 183 W. Va. 683, 398 S.E.2d 165 (1990); Deutsches Land, Inc. v. City of Glendale, 225 Wis. 2d 70, 591 N.W.2d 583 (1999).
- 12 Kimbrough v. Idaho Bd. of Tax Appeals, 150 Idaho 417, 247 P.3d 644 (2011).
- 13 American Bridge Co. v. Smith, 352 Mo. 616, 179 S.W.2d 12, 157 A.L.R. 798 (1944).
- 14 Covenant Healthcare System, Inc. v. City of Wauwatosa, 2011 WI 80, 336 Wis. 2d 522, 800 N.W.2d 906 (2011).
- 15 § 290.

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71 Am. Jur. 2d State and Local Taxation § 230

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Part Four. Exemptions from Taxation


XIV. In General; Creation and Validity of Exemptions

C. Construction and Effect

§ 230. Legislative intention and language

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West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2299, 2300

The primary rule of construction of statutes, which is to ascertain and declare the intention of the legislature and carry such intention into effect,¹ applies to the construction of enactments granting exemptions from taxation.² It is the duty of the court to ascertain and carry out the intent of the legislature.³ While the intention to exempt from taxation must be determined from the language of the statute itself,⁴ which is to be construed strictly against the claim of exemption,⁵ where, by the terms of a statute, an exemption from taxation is granted, the mandate of the statute is as much entitled to obedience as one imposing taxation.⁶

When the intent of the legislature can be ascertained, one should not employ a contrary pointing presumption to deny an intended tax exemption.⁷ The language must be given its ordinary rather than its technical meaning.⁸ The principle permits a fair interpretation in order to effectuate the legislative purpose and does not require that an unusual or unreasonable meaning be given to the words used.⁹

Language relating to exemption of property from taxation should be given a fair and reasonable¹⁰ or a strict but reasonable¹¹ interpretation, but in either event, it must be neither too broad nor too narrow,¹² in order to ascertain the true intent as to its scope,¹³ and it then should be strictly applied and enforced so that the limits thus defined are not unduly enlarged or extended.¹⁴ Certainly, the rule of strict construction does not call for a strained construction, adverse to the real intention of the legislature,¹⁵ or one that defeats or destroys the legislative intent.¹⁶

Exemptions from taxation are not to be broadly construed or extended by application to situations not clearly within the scope of the exemption language.¹⁷ A statute granting a tax exemption cannot be extended by judicial construction to create an exemption not specifically authorized.¹⁸

CUMULATIVE SUPPLEMENT

Cases:

A tax exemption is construed to give full effect to the legislative intent of the statute. *In re City of Nashua*, 164 N.H. 749, 68 A.3d 288 (2013).

[END OF SUPPLEMENT]

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Footnotes

- 1 Am. Jur. 2d, Statutes § 61.
- 2 U.S. v. Montgomery County, Md., 761 F.2d 998 (4th Cir. 1985); Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Ada County, 123 Idaho 410, 849 P.2d 83 (1993); Johnson v. Board of Sup'rs of Jefferson County, 237 Iowa 1103, 24 N.W.2d 449 (1946); Kansas Enterprises, Inc. v. Frantz, 269 Kan. 436, 6 P.3d 857 (2000); Supervisor of Assessments of Baltimore County v. Keeler, 362 Md. 198, 764 A.2d 821 (2001); Conagra Poultry Co. v. Director of Revenue, 862 S.W.2d 915 (Mo. 1993); Wolfeboro Camp School, Inc. v. Town of Wolfeboro, 138 N.H. 496, 642 A.2d 928, 91 Ed. Law Rep. 1020 (1994); Township of Holmdel v. New Jersey Highway Authority, 190 N.J. 74, 918 A.2d 603 (2007); Matter of North Carolina Inheritance Taxes, 303 N.C. 102, 277 S.E.2d 403 (1981); Peterson v. Heitkamp, 442 N.W.2d 219 (N.D. 1989); O'Reilly v. Fox Chapel Area School Dist., 521 Pa. 471, 555 A.2d 1288 (1989); Tibbals Flooring Co. v. Huddleston, 891 S.W.2d 196 (Tenn. 1994); Twin Valley Community Services, Inc. v. Town of Randolph, 170 Vt. 648, 756 A.2d 1233 (2000); In re Sehome Park Care Center, Inc., 127 Wash. 2d 774, 903 P.2d 443 (1995); Laramie County Bd. of Equalization v. Wyoming State Bd. of Equalization, 915 P.2d 1184 (Wyo. 1996).
- 3 Trotter v. State of Tennessee, for Use and Benefit of Blount County, Tenn., 290 U.S. 354, 54 S. Ct. 138, 78 L. Ed. 358 (1933); Alabama Dept. of Revenue v. National Peanut Festival Ass'n, Inc., 11 So. 3d 821 (Ala. Civ. App. 2008); Blodgett v. Bridgeport City Trust Co., 115 Conn. 127, 161 A. 83 (1932); City of Columbus v. Muscogee Mfg. Co., 165 Ga. 259, 140 S.E. 860 (1927); State v. Ritschel, 220 Minn. 578, 20 N.W.2d 673, 168 A.L.R. 274 (1945).
- 4 City of New Orleans v. Houston, 119 U.S. 265, 7 S. Ct. 198, 30 L. Ed. 411 (1886); Wolfeboro Camp School, Inc. v. Town of Wolfeboro, 138 N.H. 496, 642 A.2d 928, 91 Ed. Law Rep. 1020 (1994); Peterson v. Heitkamp, 442 N.W.2d 219 (N.D. 1989); Tibbals Flooring Co. v. Huddleston, 891 S.W.2d 196 (Tenn. 1994).
- 5 § 229.
- 6 Detroit Home and Day School v. City of Detroit, 76 Mich. 521, 43 N.W. 593 (1889); City of Winooski v. Companion, 105 Vt. 1, 162 A. 795 (1932).
- 7 U.S. v. Montgomery County, Md., 761 F.2d 998 (4th Cir. 1985).
- 8 City of Columbus v. Muscogee Mfg. Co., 165 Ga. 259, 140 S.E. 860 (1927); Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Ada County, 123 Idaho 410, 849 P.2d 83 (1993); Director of Taxation, Dept. of Revenue v. Kansas Krude Oil Reclaiming Co., 236 Kan. 450, 691 P.2d 1303 (1984); Conagra Poultry Co. v. Director of Revenue, 862 S.W.2d 915 (Mo. 1993); Peterson v. Heitkamp, 442 N.W.2d 219 (N.D. 1989); Roger Williams General Hosp. v. Littler, 566 A.2d 948 (R.I. 1989); TNS Mills, Inc. v. South Carolina Dept. of Revenue, 331 S.C. 611, 503 S.E.2d 471 (1998).

- 9 U.S. v. Montgomery County, Md., 761 F.2d 998 (4th Cir. 1985); Supervisor of Assessments of Baltimore County v. Keeler, 362 Md. 198, 764 A.2d 821 (2001).
- 10 City of Nome v. Catholic Bishop of Northern Alaska, 707 P.2d 870 (Alaska 1985); Blodgett v. Bridgeport City Trust Co., 115 Conn. 127, 161 A. 83 (1932); International Paper Co. v. Board of Environmental Protection, 1999 ME 135, 737 A.2d 1047 (Me. 1999); Supervisor of Assessments of Baltimore County v. Keeler, 362 Md. 198, 764 A.2d 821 (2001); In re Young Men's Christian Ass'n Assessment, 106 Neb. 105, 182 N.W. 593, 34 A.L.R. 1060 (1921).
- 11 Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Ada County, 123 Idaho 410, 849 P.2d 83 (1993); United Cerebral Palsy Ass'n of Greater Kansas City v. Ross, 789 S.W.2d 798 (Mo. 1990); Skyline Assembly of God v. Department of Revenue, 274 Or. 259, 545 P.2d 879 (1976); Deutsches Land, Inc. v. City of Glendale, 225 Wis. 2d 70, 591 N.W.2d 583 (1999).
- 12 People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363, 58 N.E.2d 33, 157 A.L.R. 851 (1944); In re Young Men's Christian Ass'n Assessment, 106 Neb. 105, 182 N.W. 593, 34 A.L.R. 1060 (1921).
- 13 City of Winooski v. Companion, 105 Vt. 1, 162 A. 795 (1932).
- 14 In re Young Men's Christian Ass'n Assessment, 106 Neb. 105, 182 N.W. 593, 34 A.L.R. 1060 (1921).
- 15 Blodgett v. Bridgeport City Trust Co., 115 Conn. 127, 161 A. 83 (1932); Supervisor of Assessments of Baltimore County v. Keeler, 362 Md. 198, 764 A.2d 821 (2001); Michigan United Conservation Clubs v. Lansing Tp., 423 Mich. 661, 378 N.W.2d 737 (1985); Better Living Services, Inc. v. Bolivar County, 587 So. 2d 914 (Miss. 1991); In re Young Men's Christian Ass'n Assessment, 106 Neb. 105, 182 N.W. 593, 34 A.L.R. 1060 (1921); Peterson v. Heitkamp, 442 N.W.2d 219 (N.D. 1989).
- 16 City of Pinson v. Utilities Bd. of City of Oneonta, 986 So. 2d 367 (Ala. 2007); Tucson Botanical Gardens, Inc. v. Pima County, 218 Ariz. 523, 189 P.3d 1096 (Ct. App. Div. 1 2008).
- 17 International Paper Co. v. Board of Environmental Protection, 1999 ME 135, 737 A.2d 1047 (Me. 1999).
- 18 Kimbrough v. Idaho Bd. of Tax Appeals, 150 Idaho 417, 247 P.3d 644 (2011); City of Chicago v. Illinois Dept. of Revenue, 147 Ill. 2d 484, 168 Ill. Dec. 841, 590 N.E.2d 478 (1992); Indian Hills Community Church v. County Bd. of Equalization of Lancaster County, 226 Neb. 510, 412 N.W.2d 459 (1987); Sears, Roebuck & Co. v. Woods, 708 S.W.2d 374 (Tenn. 1986).

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Part Four. Exemptions from Taxation


XIV. In General; Creation and Validity of Exemptions

C. Construction and Effect

§ 231. Effect of contemporaneous construction

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2299, 2300

The fact that an exemption from taxation with respect to certain property has long been enjoyed by virtue of a supposed grant is not conclusive. The omission of the taxing officers of the state in previous years to assess the property in question cannot control the duty imposed by law upon their successors, or the power of the legislature, or the legal construction of the statute under which the exemption is claimed.¹ The practical construction given to the law for a long period of years is strong evidence that the claim of exemption is sound² but cannot be accepted as conclusive of the existence of an exemption from taxation.³ When the practice for a number of years has been to tax property now claimed to be exempt, evidence of such practice is more important than when the situation is reversed.⁴

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Footnotes

- ¹ [Vicksburg, S. & P.R. Co. v. Dennis](#), 116 U.S. 665, 6 S. Ct. 625, 29 L. Ed. 770 (1886); [Stillman v. Lynch](#), 56 Utah 540, 192 P. 272, 12 A.L.R. 552 (1920).
- ² [Wright v. Central of Georgia Ry. Co.](#), 236 U.S. 674, 35 S. Ct. 471, 59 L. Ed. 781 (1915); [Coca-Cola Co. v. State Bd. of Equalization](#), 25 Cal. 2d 918, 156 P.2d 1 (1945); [In re Sehome Park Care Center, Inc.](#), 127 Wash. 2d 774, 903 P.2d 443 (1995).
- ³ [Coca-Cola Co. v. State Bd. of Equalization](#), 25 Cal. 2d 918, 156 P.2d 1 (1945); [New York Life Ins. Co. v. Board of Com'rs of Oklahoma County](#), 1932 OK 193, 155 Okla. 247, 9 P.2d 936, 82 A.L.R. 1425 (1932).
- ⁴ [State of New Jersey v. Wright](#), 117 U.S. 648, 6 S. Ct. 907, 29 L. Ed. 1021 (1886); [Tony P. Sellitti Const. Co. v. Caryl](#), 185 W. Va. 584, 408 S.E.2d 336 (1991).

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XIV. In General; Creation and Validity of Exemptions

C. Construction and Effect

§ 232. Taxes affected by exemptions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2299, 2300

While the determination of the question of the kinds of taxes to which an exemption extends depends, to a large extent, upon the language of the exempting statute, an exemption from taxation applies primarily to ad valorem property taxes and not to excises, especially to such excises as are not in lieu of property taxes but are imposed upon the enjoyment of a privilege.¹ The rule that exemptions from taxation do not ordinarily apply to excises is not absolute. It is dependent upon the circumstances of each case.² When the exemption is given in such broad language as to include every tax and impost whatever, it will apply to excises.³ On the other hand, an exemption may be given in such a way as not to apply to the general property tax. Thus, an exemption from license fees of every description does not include an exemption from a tax on the franchise of a corporation as property.⁴

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Footnotes

- 1 [In re Simpson's Estate](#), 43 Cal. 2d 594, 275 P.2d 467, 47 A.L.R.2d 991 (1954); [City of Louisville v. Cromwell](#), 233 Ky. 828, 27 S.W.2d 377 (1930); [Christgau v. Woodlawn Cemetery Ass'n](#), 208 Minn. 263, 293 N.W. 619 (1940).
- 2 [State ex rel. Missouri Portland Cement Co. v. Smith](#), 338 Mo. 409, 90 S.W.2d 405 (1936).
- 3 [Citizens' Bank of Louisiana v. Parker](#), 192 U.S. 73, 24 S. Ct. 181, 48 L. Ed. 346 (1904).
- 4 [South Covington & Cincinnati St. Ry. Co. v. Town of Bellevue](#), 105 Ky. 283, 20 Ky. L. Rptr. 1184, 49 S.W. 23 (1899).

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XIV. In General; Creation and Validity of Exemptions

C. Construction and Effect

§ 233. Area of land affected by exemption

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2299, 2300

Determination as to the area of land within a tax exemption extended to property is governed by the necessity, or lack of necessity, of the land for the full carrying out of the exempt use. Such exemption extends to land thus found reasonably necessary to the full exercise and enjoyment of such use.¹ Conversely, the area exempted from taxation includes only so much as is necessary for the exempt use or excludes such area as is unnecessary to such use.² It is not always necessary that an area be contiguous to the main area exempted in order that it, too, may be exempted from taxation.³

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- 1 [Yale University v. Town of New Haven](#), 71 Conn. 316, 42 A. 87 (1899); [City of Chicago v. Illinois Dept. of Revenue](#), 147 Ill. 2d 484, 168 Ill. Dec. 841, 590 N.E.2d 478 (1992); [State v. Collector of Chatham](#), 52 N.J.L. 373, 20 A. 292 (N.J. Ct. Err. & App. 1890).
- 2 [Gibbons v. District of Columbia](#), 116 U.S. 404, 6 S. Ct. 427, 29 L. Ed. 680 (1886); [All Saints Parish v. Inhabitants of Town of Brookline](#), 178 Mass. 404, 59 N.E. 1003 (1901); [New Jersey Turnpike Authority v. Washington Tp.](#), Mercer County, 16 N.J. 38, 106 A.2d 4 (1954); [First Baptist Church of Pittsburgh v. City of Pittsburgh](#), 341 Pa. 568, 20 A.2d 209, 134 A.L.R. 1169 (1941).
- 3 [City of Chicago v. Illinois Dept. of Revenue](#), 147 Ill. 2d 484, 168 Ill. Dec. 841, 590 N.E.2d 478 (1992); [Dougherty v. City of Philadelphia](#), 112 Pa. Super. 570, 172 A. 177 (1934).

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A. In General

§ 234. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#) , [2317](#), [2318](#), [2322](#)

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[Classification, as real estate or personal property, of mobile homes or trailers for purposes of state or local taxation, 7 A.L.R.4th 1016](#)

When the legislature selects the subject of taxation, all persons and property coming within the scope and import of the taxing statute become liable to the taxes levied unless the legislature for reasons of public policy has created an express exemption.¹ The fact that a property owner is exempt from federal taxation under the provisions of the Internal Revenue Code is not determinative of whether he or she is exempt from state taxation.² Of course, an exemption from taxation can be waived.³

An exemption of particular property from taxation is not a release in personam but a release in rem; the res to which the release applies must be found and identified by the taxing officer, or no exemption can be recognized.⁴

There is no constitutional objection to the validity of a statute exempting trailer homes from a real estate property tax.⁵

CUMULATIVE SUPPLEMENT

Cases:

Proper focus of any inquiry into the propriety of tax exemption is whether the use of the property furthers exempt purposes. [CAVU Co. v. Martinez, 2014-NMSC-029, 332 P.3d 287 \(N.M. 2014\)](#).

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Footnotes

- 1 [Wenner v. Mothersead, 1927 OK 30, 129 Okla. 273, 264 P. 816 \(1927\)](#).
- 2 [Welborn v. State, 232 Ga. App. 837, 503 S.E.2d 85 \(1998\)](#); [Ladies Literary Club v. City of Grand Rapids, 409 Mich. 748, 298 N.W.2d 422 \(1980\)](#); [Nebraska State Bar Foundation v. Lancaster County Bd. of Equalization, 237 Neb. 1, 465 N.W.2d 111 \(1991\)](#); [Friendship Manor Corp. v. Tax Commission, 26 Utah 2d 227, 487 P.2d 1272 \(1971\)](#).
- 3 [Sprik v. Regents of University of Michigan, 43 Mich. App. 178, 204 N.W.2d 62 \(1972\)](#), judgment aff'd, [390 Mich. 84, 210 N.W.2d 332 \(1973\)](#); [State ex rel. Council Apartments, Inc. v. Leachman, 603 S.W.2d 930 \(Mo. 1980\)](#).
- 4 [Benjamin Rose Institute v. Myers, 92 Ohio St. 252, 110 N.E. 924 \(1915\)](#).
- 5 [Wright v. City of Peabody, 331 Mass. 161, 118 N.E.2d 68 \(1954\)](#).

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XV. Persons, Property, and Organizations Exempt from Taxation

A. In General

§ 235. Personal and household items

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2320](#), [2321](#)

A.L.R. Library

[Applicability of State Sales and Use Tax Exemptions for Custom Programs Prepared to Special Order of Customer](#), 50 A.L.R.6th 261

[Validity, Construction, and Application of Sales, Use, and Utility Taxes on Retail Transactions of Internet Sellers and Internet Access Providers](#), 30 A.L.R.6th 341

In many jurisdictions which purport to tax personal property, wearing apparel and household furniture to a limited amount are exempt from taxation. Household furniture has been held to mean those vessels, utensils, or goods which are designed for conducting and managing household affairs and not to include articles of ornamentation, such as pictures.¹ Household goods do not include fixtures.² Under a state statute exempting household furnishings from taxation, personal property owned by a homeowners' association for use by its members, who were homeowners in a planned residential community, used in connection with a common clubhouse, was exempt from taxation.³ A statute exempting personal property from taxation includes movable equipment.⁴ Under a statute exempting the library of every individual, a law library owned by an individual is exempt.⁵

Footnotes

- 1 [Towns v. Pratt, 33 N.H. 345, 1856 WL 2726 \(1856\).](#)
- 2 [State ex rel. Meyer v. Peters, 191 Neb. 330, 215 N.W.2d 520 \(1974\).](#)
- 3 [Lake Forest Community Assn. v. County of Orange, 86 Cal. App. 3d 394, 150 Cal. Rptr. 286 \(4th Dist. 1978\).](#)
- 4 [Wharf Resources \(USA\) Inc. v. Farrier, 1996 SD 110, 552 N.W.2d 610 \(S.D. 1996\).](#)
- 5 [Patterson v. Board of Review of Grayling Tp., 125 Mich. 126, 83 N.W. 1031 \(1900\).](#)

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XV. Persons, Property, and Organizations Exempt from Taxation

A. In General

§ 236. Intangible property

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In some jurisdictions, intangible property is exempt from taxation.¹ "Intangible property" means such property as has no intrinsic and marketable value but is merely the representation or evidence of value, such as certificates of stocks, bonds, promissory notes, copyrights, and franchises.²

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Footnotes

- ¹ [Beaver County v. WilTel, Inc.](#), 2000 UT 29, 995 P.2d 602 (Utah 2000); [Adams Outdoor Advertising, Ltd. v. City of Madison](#), 2006 WI 104, 294 Wis. 2d 441, 717 N.W.2d 803 (2006); [RT Communications, Inc. v. State Bd. of Equalization for State of Wyo.](#), 11 P.3d 915 (Wyo. 2000).
- ² [RT Communications, Inc. v. State Bd. of Equalization for State of Wyo.](#), 11 P.3d 915 (Wyo. 2000). Intangibles include money, credit, bonds, stocks, franchises, goodwill, copyrights, and patents. [Beaver County v. WilTel, Inc.](#), 2000 UT 29, 995 P.2d 602 (Utah 2000).

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A. In General

§ 237. Soldiers and veterans

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Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 111](#) (Petition or application—To set aside assessment of property and revoke administrative agency's disallowance of military tax exemption)

In many jurisdictions, statutes recognize the present service of those in the Armed Forces or the past service of veterans by yielding to those in service or the veteran, or the widow of the veteran, an exemption from property¹ or income² taxation. Such statutes do not violate guaranties of the 14th Amendment to the United States Constitution, and they have been sustained against the contention of violating constitutional provisions against the passage of local or special laws for the collection of taxes, local or special laws exempting property from taxation, or laws relinquishing obligations to the state or municipal corporations.³ However, a state statute that grants a property tax exemption limited to Vietnam veterans who resided in the state before a fixed date violates the Equal Protection Clause of the 14th Amendment to the United States Constitution because the statute's distinction between different classes of resident veterans is not rationally related to the asserted goal of encouraging veterans to settle in the state.⁴ Moreover, statutes exempting veterans from the necessity of obtaining a license, or the payment of occupation or license taxes, have been held to be violative of the various constitutional provisions which have been urged against such legislation.⁵

Under federal statute, it is provided that payments of benefits due under any law administered by the United States Veterans' Administration and made to, or on account of, a "beneficiary" are exempt from taxation.⁶ In addition, another federal statute, the Servicemembers Civil Relief Act, states that a servicemember may neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.⁷ The statute provides further that a spouse of a servicemember may neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the spouse by reason of being absent or present in any tax jurisdiction of the United States solely to be with the servicemember in compliance with the servicemember's military orders if the residence or domicile, as the case may be, is the same for the servicemember and the spouse.⁸

CUMULATIVE SUPPLEMENT

Cases:

Property that had been acquired, and then later specially adapted to better meet disabled veteran's needs with the assistance of the Veteran's Administration (VA), qualified for property tax exemption, even though the property was not originally acquired or purchased by or with the assistance of a VA loan; given the scope of assistance available from the VA, the term acquire encompassed remodeling a home that was itself acquired by the veteran prior to applying for VA assistance, but which was not adapted to the requirements of the veteran's disability at that time. [38 U.S.C.A. § 2102\(a\)\(1\)-\(4\)](#); [N.H. Rev. Stat. Ann. § 72:36-a. Appeal of Town of Belmont, 206 A.3d 949 \(N.H. 2019\)](#).

Disabled veteran who moved from Texas did not have a vested right to continued qualification for the Texas statutory tax exemption for property owned by a disabled veteran, which tax exemption required Texas residency; state Constitution merely granted discretion to the legislature to determine whether to enact statutes exempting from taxation property owned by disabled veterans, and any such exemption was legislatively revocable. [Vernon's Ann. Texas Const. Art. 8, § 2\(b\)](#); [V.T.C.A., Tax Code § 11.22\(g\)](#). [Seguin v. Bexar Appraisal Dist., 373 S.W.3d 699 \(Tex. App. San Antonio 2012\)](#), petition for review filed, (July 16, 2012).

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Footnotes

- 1 [DeCenzo v. Board of Assessors of Framingham, 372 Mass. 523, 362 N.E.2d 913 \(1977\)](#); [Anastasio v. City of New York, 93 A.D.2d 769, 461 N.Y.S.2d 337 \(1st Dep't 1983\)](#), order aff'd, [61 N.Y.2d 615, 471 N.Y.S.2d 850, 459 N.E.2d 1287 \(1983\)](#); [State ex rel. Bd. of Com'rs of Goshen County v. Snyder, 29 Wyo. 199, 212 P. 771 \(1923\)](#).
- 2 [§ 384](#).
- 3 [Kaiser v. Hopkins, 6 Cal. 2d 537, 58 P.2d 1278 \(1936\)](#).
- 4 [Hooper v. Bernalillo County Assessor, 472 U.S. 612, 105 S. Ct. 2862, 86 L. Ed. 2d 487 \(1985\)](#).
- 5 [Marallis v. City of Chicago, 349 Ill. 422, 182 N.E. 394, 83 A.L.R. 1222 \(1932\)](#); [Com. v. Hana, 195 Mass. 262, 81 N.E. 149 \(1907\)](#); [City of Laurens v. Anderson, 75 S.C. 62, 55 S.E. 136 \(1906\)](#); [State v. Whitcom, 122 Wis. 110, 99 N.W. 468 \(1904\)](#).
- 6 [38 U.S.C.A. § 5301\(a\)](#).
- 7 [50 App. U.S.C.A. § 571\(a\)\(1\)](#).
- 8 [50 App. U.S.C.A. § 571\(a\)\(2\)](#).

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XV. Persons, Property, and Organizations Exempt from Taxation

A. In General

§ 238. Aged persons

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West's Key Number Digest, [Taxation](#)  2317

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[Construction of statute or ordinance giving property tax exemption or favorable property tax rate to older persons, 45 A.L.R.3d 1153](#)

In some states, exemptions of property of a limited value are given to those who by reason of age are thought to be less able to bear the burdens of government.¹ Thus, it has been said that such an exemption is based on the financial exigencies of the elderly owner.² While it has been held that constitutional provisions allowing "liberal homestead and exemption laws" and exemption from taxation of charitable organizations do not permit a property tax exemption of a given amount for senior citizens,³ there is also authority that such an exemption neither violates the Equal Protection Clause of the United States Constitution nor that of a state constitution because there are just grounds for the exemption.⁴ Also, such a law does not violate a state constitutional requirement of equality and uniformity of taxation.⁵ The general rule, to the effect that statutory provisions for exemptions from taxation are to be strictly construed,⁶ has been applied to provisions of the kind under consideration.⁷ The benefits of a statute affording a property tax concession to older persons have been denied where the taxpayer simply occupied the subject property under the terms of a 99-year lease.⁸ On the other hand, the full benefit of such a statute has been allowed where such an aged taxpayer occupied only a portion of the subject property and rented the remainder to others.⁹

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Footnotes

- 1 State ex rel. Tieman v. City of Indianapolis, 69 Ind. 375, 1879 WL 5762 (1879); Board of Assessors of Saugus v. Baumann, 370 Mass. 36, 345 N.E.2d 360 (1976); Appeal of Hood, 127 N.H. 824, 508 A.2d 1075 (1986); Engle v. Talarico, 33 N.Y.2d 237, 351 N.Y.S.2d 677, 306 N.E.2d 796 (1973).
- 2 Board of Assessors of Saugus v. Baumann, 370 Mass. 36, 345 N.E.2d 360 (1976); Engle v. Talarico, 33 N.Y.2d 237, 351 N.Y.S.2d 677, 306 N.E.2d 796 (1973).
- 3 Hoffman v. Lehnhausen, 48 Ill. 2d 323, 269 N.E.2d 465, 45 A.L.R.3d 1138 (1971).
- 4 Opinion of the Justices, 110 N.H. 206, 266 A.2d 111 (1970).
- 5 Opinion of the Justices, 115 N.H. 228, 338 A.2d 553 (1975).
- 6 § 229.
- 7 Inhabitants of Mechanic Falls v. Millett, 121 Me. 329, 117 A. 93 (1922); Kirby v. Board of Assessors of Medford, 350 Mass. 386, 215 N.E.2d 99 (1966); West Jersey Grove Camp Ass'n v. City of Vineland, 80 N.J. Super. 361, 193 A.2d 785 (App. Div. 1963); Engle v. Talarico, 33 N.Y.2d 237, 351 N.Y.S.2d 677, 306 N.E.2d 796 (1973).
- 8 West Jersey Grove Camp Ass'n v. City of Vineland, 80 N.J. Super. 361, 193 A.2d 785 (App. Div. 1963).
- 9 Coroa v. Board of Assessors of Fall River, 354 Mass. 235, 236 N.E.2d 875 (1968).

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XV. Persons, Property, and Organizations Exempt from Taxation

A. In General

§ 239. Growing crops; agricultural lands

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

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Some states afford preferential property tax treatment to land used for agricultural purposes.¹

In some states, growing crops are exempted from taxation.² It has been held that the exception of "agriculture and farming" from the business franchise tax extends to activities of growing and managing timberland provided that there is no direct involvement in actual timbering activity, and the other statutory quantifications and qualifications are met.³

When a statute exempts farm dwellings from taxation, it must be established that the owner actually engages in farming activities.⁴

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Footnotes

- ¹ [Am. Jur. 2d, Agriculture § 9.](#)
- ² [McHenry v. Downer](#), 116 Cal. 20, 47 P. 779 (1897).
- ³ [Morris v. Heartwood Forestland Fund Ltd. Partnership](#), 228 W. Va. 142, 718 S.E.2d 492 (2010).
- ⁴ [Supervisor of Assessments of Howard County v. Carroll](#), 298 Md. 311, 469 A.2d 858 (1984); [Mills v. Board of County Com'rs, Burleigh County](#), 305 N.W.2d 832 (N.D. 1981) (holding that cutting firewood and clearing brush is not farming); [Bower v. Edwards County Appraisal Dist.](#), 697 S.W.2d 528 (Tex. App. San Antonio 1985) (holding that allowing wild deer to eat vegetation is not farming).

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Part Four. Exemptions from Taxation

XV. Persons, Property, and Organizations Exempt from Taxation

A. In General

§ 240. Farm machinery and equipment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2322](#), [2333](#)

In some jurisdictions, farm machinery and equipment actually and regularly used exclusively in farming is exempt from taxation.¹ Such an exemption does not apply to buildings, such as a layer house.² It has been held limited to equipment used to cultivate farmland or to raise animals so as to exclude the machinery and equipment used by a winery to produce wine.³ However, such an exemption has been extended to machinery on the premises of a grower used to wash, cook, and package produce for market.⁴

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Footnotes

- 1 [Farmers Co-op. v. Kansas Bd. of Tax Appeals](#), 236 Kan. 632, 694 P.2d 462 (1985); [Rowe-Reilly Corp. v. Tracy](#), 85 Ohio St. 3d 625, 1999-Ohio-326, 710 N.E.2d 694 (1999); [King Estate Winery, Inc. v. Department of Revenue](#), 329 Or. 414, 988 P.2d 369 (1999); [Pulsfus Poultry Farms, Inc. v. Town of Leeds](#), 149 Wis. 2d 797, 440 N.W.2d 329 (1989).
- 2 [Pulsfus Poultry Farms, Inc. v. Town of Leeds](#), 149 Wis. 2d 797, 440 N.W.2d 329 (1989).
- 3 [King Estate Winery, Inc. v. Department of Revenue](#), 329 Or. 414, 988 P.2d 369 (1999).
- 4 [Kermit Chapman & Sons, Inc. v. Lindley](#), 60 Ohio App. 2d 233, 14 Ohio Op. 3d 218, 396 N.E.2d 783 (5th Dist. Stark County 1977).

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71 Am. Jur. 2d State and Local Taxation § 241

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XV. Persons, Property, and Organizations Exempt from Taxation

A. In General

§ 241. Property used in pollution control

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2317

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[Validity and construction of statute or ordinance allowing tax exemption for property used in pollution control, 65 A.L.R.3d 434](#)

Many legislatures have chosen to encourage pollution control by exempting from taxation equipment used for pollution control.¹ Pollution control machinery is entitled to exemption only when claimed by the facility owners, not by sellers or middlemen.² Such pollution control facilities must meet statutory or regulatory requirements in order to be exempt.³ Moreover, under some statutes, in order to be exempt, the equipment's primary purpose must be pollution control and not manufacturing.⁴ Under another formulation, if the equipment is necessary to manufacturing, only that portion of its value directed at pollution control is exempt.⁵

It is sometimes said that if the equipment does not actually reduce, control, or eliminate pollution in any significant amount, it is not exempt.⁶ However, monitoring devices have been included as exempt pollution control equipment.⁷

The cost of operating pollution control equipment has been held not included in a statute which exempts such equipment.⁸ However, under another statute, a taxpayer was entitled to a sales and use tax exemption for fuel oil used to power boilers designed to generate steam that was used in part in a pollution control facility.⁹

CUMULATIVE SUPPLEMENT

Cases:

Property does not qualify as being wholly or partly for pollution control purposes within meaning of pollution-control tax exemption unless it is adopted for the specific purpose of complying with an environmental regulation; i.e., the property has to be installed for a "green" purpose as defined by government regulators. [Tex. Tax Code Ann. § 11.31](#). [Brazos Electric Power Cooperative, Inc. v. Texas Commission on Environmental Quality](#), 538 S.W.3d 666 (Tex. App. El Paso 2017), petition for review filed, (Dec. 7, 2017).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Heath v. Research-Cottrell, Inc.](#), 258 Ark. 813, 529 S.W.2d 336 (1975); [Indian River Const. Co. v. Beloit Passavant Corp.](#), 241 Ga. 282, 244 S.E.2d 814 (1978); [Richardson v. State Tax Commission](#), 100 Idaho 705, 604 P.2d 719 (1979); [Commonwealth Edison Co. v. Department of Local Government Affairs](#), 85 Ill. 2d 495, 55 Ill. Dec. 492, 426 N.E.2d 817 (1981); [International Paper Co. v. Board of Environmental Protection](#), 1999 ME 135, 737 A.2d 1047 (Me. 1999); [Covert Tp. Assessor v. State Tax Commission](#), 407 Mich. 561, 287 N.W.2d 895 (1980); [United Power Ass'n v. C.I.R.](#), 483 N.W.2d 74 (Minn. 1992); [North Country Environmental Services v. State](#), 157 N.H. 15, 943 A.2d 786 (2008); [Marietta Coal Co. v. Lindley](#), 6 Ohio St. 3d 6, 450 N.E.2d 1164 (1983); [Reynolds Metals Co. v. Department of Revenue](#), 299 Or. 592, 705 P.2d 712 (1985), on reconsideration on other grounds, 300 Or. 250, 709 P.2d 710 (1985); [Weyerhaeuser Co. v. State Dept. of Ecology](#), 86 Wash. 2d 310, 545 P.2d 5 (1976); [Laramie County Bd. of Equalization v. Wyoming State Bd. of Equalization](#), 915 P.2d 1184 (Wyo. 1996).
- 2 [Indian River Const. Co. v. Beloit Passavant Corp.](#), 241 Ga. 282, 244 S.E.2d 814 (1978).
- 3 [International Paper Co. v. Board of Environmental Protection](#), 1999 ME 135, 737 A.2d 1047 (Me. 1999); [Appeal of City of Berlin](#), 131 N.H. 285, 553 A.2d 758 (1988); [Marietta Coal Co. v. Lindley](#), 6 Ohio St. 3d 6, 450 N.E.2d 1164 (1983); [Reynolds Metals Co. v. Department of Revenue](#), 299 Or. 592, 705 P.2d 712 (1985), on reconsideration on other grounds, 300 Or. 250, 709 P.2d 710 (1985); [Weyerhaeuser Co. v. State Dept. of Ecology](#), 86 Wash. 2d 310, 545 P.2d 5 (1976).
- 4 [Commonwealth Edison Co. v. Department of Local Government Affairs](#), 85 Ill. 2d 495, 55 Ill. Dec. 492, 426 N.E.2d 817 (1981); [International Paper Co. v. Board of Environmental Protection](#), 1999 ME 135, 737 A.2d 1047 (Me. 1999); [Henry Perkins Co. v. Board of Assessors of Bridgewater](#), 377 Mass. 117, 384 N.E.2d 1241 (1979); [Covert Tp. Assessor v. State Tax Commission](#), 407 Mich. 561, 287 N.W.2d 895 (1980); [Marietta Coal Co. v. Lindley](#), 6 Ohio St. 3d 6, 450 N.E.2d 1164 (1983); [Reynolds Metals Co. v. Department of Revenue](#), 299 Or. 592, 705 P.2d 712 (1985), on reconsideration on other grounds, 300 Or. 250, 709 P.2d 710 (1985); [Weyerhaeuser Co. v. State Dept. of Ecology](#), 86 Wash. 2d 310, 545 P.2d 5 (1976); [Laramie County Bd. of Equalization v. Wyoming State Bd. of Equalization](#), 915 P.2d 1184 (Wyo. 1996).
- 5 [Weyerhaeuser Co. v. State Dept. of Ecology](#), 86 Wash. 2d 310, 545 P.2d 5 (1976).
- 6 [International Paper Co. v. Board of Environmental Protection](#), 1999 ME 135, 737 A.2d 1047 (Me. 1999).
- 7 [State Dept. of Revenue and Taxation v. Pacificorp](#), 872 P.2d 1163 (Wyo. 1994).
- 8 [General Chemical Corp. v. Wyoming State Bd. of Equalization](#), 819 P.2d 418 (Wyo. 1991).

9 [Eagerton v. Courtaulds North America, Inc., 421 So. 2d 104 \(Ala. 1982\).](#)

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Part Four. Exemptions from Taxation

XV. Persons, Property, and Organizations Exempt from Taxation

B. Public Bodies and Property

1. In General

§ 242. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2311, 3665, 3684

It is a well-established principle of law that property of the United States and its agencies and instrumentalities is not subject to taxation by the several states or their political subdivisions.¹ Also, property owned by a state, county, municipal corporation, or other local public body is exempt from taxation either as a matter of public policy² or by specific constitutional or statutory provisions³ provided that it is devoted to uses public in their nature.⁴ When public property is involved, exemption is the rule and taxation the exception.⁵ Exemptions to taxation are given a liberal construction when a governmental agency owns the property.⁶ Tax statutes are construed not to embrace property of the government or its instrumentalities unless the legislative intention to include such property is plainly and clearly expressed.⁷

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Footnotes

- ¹ §§ 143 to 156.
- ² *Newton v. City of Atlanta*, 189 Ga. 441, 6 S.E.2d 61 (1939); *Pennsylvania State University v. Derry Tp. School Dist.*, 557 Pa. 91, 731 A.2d 1272 (1999); *Pelouze v. City of Richmond*, 183 Va. 805, 33 S.E.2d 767 (1945).
- ³ *Rich v. Braxton*, 158 U.S. 375, 15 S. Ct. 1006, 39 L. Ed. 1022 (1895); *Thomas v. Alabama Mun. Elec. Authority*, 432 So. 2d 470 (Ala. 1983); *Sacramento Mun. Utility Dist. v. County of Sonoma*, 235 Cal. App. 3d 726, 1 Cal. Rptr. 2d 99 (1st Dist. 1991); *Newton v. City of Atlanta*, 189 Ga. 441, 6 S.E.2d 61 (1939);

Reynard v. City of Caldwell, 53 Idaho 62, 21 P.2d 527, 90 A.L.R. 1124 (1933); City of Chicago v. Illinois Dept. of Revenue, 147 Ill. 2d 484, 168 Ill. Dec. 841, 590 N.E.2d 478 (1992); Slay v. Louisiana Energy and Power Authority, 473 So. 2d 51 (La. 1985); Metropolitan Sports Facilities Com'n v. County of Hennepin, 561 N.W.2d 513 (Minn. 1997); Easley v. City of Lincoln, 213 Neb. 450, 330 N.W.2d 130 (1983); In re Melrose Ave. in Borough of the Bronx, 234 N.Y. 48, 136 N.E. 235, 23 A.L.R. 1233 (1922); Appeal of University of North Carolina, 300 N.C. 563, 268 S.E.2d 472 (1980); Columbus City School Dist. Bd. of Edn. v. Zaino, 90 Ohio St. 3d 496, 2001-Ohio-5, 739 N.E.2d 783 (2001); First American Bank and Trust Co. of Purcell v. Oklahoma Indus. Finance Authority, 1997 OK 155, 951 P.2d 625 (Okla. 1997), as corrected, (Apr. 3, 1998); Avis Rent A Car System, Inc. v. Department of Revenue, 330 Or. 35, 995 P.2d 1163 (2000); Quirk v. Campbell, 302 S.C. 148, 394 S.E.2d 320 (1990); Petition of C M Corp., 334 N.W.2d 675 (S.D. 1983); County Bd. of Equalization of Salt Lake County v. Utah State Tax Com'n, 927 P.2d 176, 114 Ed. Law Rep. 653 (Utah 1996); York County v. Peninsula Airport Com'n, 235 Va. 477, 369 S.E.2d 665 (1988); City of Kennewick v. Benton County, 131 Wash. 2d 768, 935 P.2d 606 (1997); City of Franklin v. Crystal Ridge, Inc., 180 Wis. 2d 561, 509 N.W.2d 730 (1994); State Bd. of Equalization v. City of Lander, 882 P.2d 844 (Wyo. 1994).

4 §§ 254 to 257.

5 Sacramento Mun. Utility Dist. v. County of Sonoma, 235 Cal. App. 3d 726, 1 Cal. Rptr. 2d 99 (1st Dist. 1991); Newton v. City of Atlanta, 189 Ga. 441, 6 S.E.2d 61 (1939); Avis Rent A Car System, Inc. v. Department of Revenue, 330 Or. 35, 995 P.2d 1163 (2000); Charleston County Aviation Authority v. Wasson, 277 S.C. 480, 289 S.E.2d 416 (1982); Egan Independent Consol. School Dist. No. 1 of Moody County v. Minnehaha County, 65 S.D. 32, 270 N.W. 527, 108 A.L.R. 572 (1936); Pelouze v. City of Richmond, 183 Va. 805, 33 S.E.2d 767 (1945); State ex rel. Wis. University Bldg. Corp. v. Bareis, 257 Wis. 497, 44 N.W.2d 259 (1950).

6 Sacramento Mun. Utility Dist. v. County of Sonoma, 235 Cal. App. 3d 726, 1 Cal. Rptr. 2d 99 (1st Dist. 1991); Taylor v. Davenport, 281 S.C. 497, 316 S.E.2d 389 (1984).

7 Van Brocklin v. Anderson (U.S. Reports Title: Van Brocklin v. Tennessee), 117 U.S. 151, 6 S. Ct. 670, 29 L. Ed. 845 (1886); In re Droll, 108 Neb. 85, 187 N.W. 876, 26 A.L.R. 543 (1922); Pelouze v. City of Richmond, 183 Va. 805, 33 S.E.2d 767 (1945).

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Part Four. Exemptions from Taxation

XV. Persons, Property, and Organizations Exempt from Taxation


B. Public Bodies and Property

1. In General

§ 243. What is public property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2311 to 2316

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[When Is Property Owned by State or Local Governmental Body Put to Public Use So As to Be Eligible for Property Tax Exemption, 114 A.L.R.5th 561](#)

"Public property," as that term is used in provisions making public property exempt from taxation, in general, means property belonging either to the State or a political division thereof, such as a county, city, town, and the like, used exclusively for any public purpose.¹ An exemption from taxation of public property used for a public purpose does not, however, include property owned and occupied by a private corporation but devoted to a public use.²

CUMULATIVE SUPPLEMENT

Cases:

When town uses property in a proprietary manner, the property is not exempt from taxation. [Wyo. Const. art. 15, § 12](#); [Wyo. Stat. Ann. § 39-11-105](#). [Eisele v. Town of Pine Bluffs, 2020 WY 22, 458 P.3d 46 \(Wyo. 2020\)](#).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Board of Trustees of Gate City Guard v. City of Atlanta, 113 Ga. 883, 39 S.E. 394 \(1901\)](#); [City of Osceola v. Board of Review of Clarke County, 490 N.W.2d 539 \(Iowa 1992\)](#); [Anoka County v. City of St. Paul, 194 Minn. 554, 261 N.W. 588, 99 A.L.R. 1137 \(1935\)](#).
- 2 [State v. Cooley, 62 Minn. 183, 64 N.W. 379 \(1895\)](#).

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XV. Persons, Property, and Organizations Exempt from Taxation

B. Public Bodies and Property

1. In General

§ 244. Property held in trust

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2311

The determination of whether property held in trust by a public body is subject to or exempt from taxation seems to depend upon whether or not the income of such property is to be devoted to a public use.¹ It has been held that if the income may be used for general expenditures or for purposes not public in the legal sense, the property is taxable.² On the other hand, if the income is specifically limited by the terms of the trust to defray the expenses of a particular public enterprise, the property has been held exempt.³

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Footnotes

- 1 [National Bank of Burlington v. Huneke](#), 250 Iowa 1030, 98 N.W.2d 7 (1959); [City of Kennewick v. Benton County](#), 131 Wash. 2d 768, 935 P.2d 606 (1997).
- 2 [City of St. Louis v. Wenneker](#), 145 Mo. 230, 47 S.W. 105 (1898).
- 3 [Burr v. City of Boston](#), 208 Mass. 537, 95 N.E. 208 (1911).

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XV. Persons, Property, and Organizations Exempt from Taxation

B. Public Bodies and Property

1. In General

§ 245. Exemptions from excise and privilege taxes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2311

While generally it is assumed, in the absence of expression of clear intent to the contrary in the taxing statutes, that property of municipal corporations and other subdivisions of the State is exempt from property taxes, such exemption does not, according to many courts, exist with reference to excise and privilege taxes, and as to such taxes, municipal corporations are liable unless there is an express exemption in the tax statute.¹ Moreover, when there is an express constitutional or statutory provision for the exemption of municipal corporations from taxation, such provision will be construed to apply only to ad valorem taxes on specific property and not to exempt such bodies from license and excise taxes.² Some courts, however, incline to the view that the implied exemption of municipal corporations, counties, and other political subdivisions extends to excise taxes, as well as to property taxes.³

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Footnotes

- 1 [City of Idaho Falls v. Pfost](#), 53 Idaho 247, 23 P.2d 245 (1933); [City of Louisville v. Cromwell](#), 233 Ky. 828, 27 S.W.2d 377 (1930); [In re City of Enid](#), 1945 OK 135, 195 Okla. 365, 158 P.2d 348, 159 A.L.R. 358 (1945); [Crockett v. Salt Lake County](#), 72 Utah 337, 270 P. 142, 60 A.L.R. 867 (1928).
- 2 [In re City of Enid](#), 1945 OK 135, 195 Okla. 365, 158 P.2d 348, 159 A.L.R. 358 (1945).
- 3 [Sacramento Mun. Utility Dist. v. County of Sonoma](#), 235 Cal. App. 3d 726, 1 Cal. Rptr. 2d 99 (1st Dist. 1991); [O'Berry v. Mecklenburg County](#), 198 N.C. 357, 151 S.E. 880, 67 A.L.R. 1304 (1930).

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XV. Persons, Property, and Organizations Exempt from Taxation

B. Public Bodies and Property

1. In General

§ 246. Taxation by state or municipality of its own property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2311

Although, in the absence of a constitutional prohibition, a state or a municipality having general powers of taxation may tax its own property, if it sees fit to do so,¹ in the absence of a manifest intention otherwise, it is a generally accepted principle that the property of a particular body politic, whether used for public purposes or held for the income to be derived therefrom, is not taxable by the same body politic.² This exemption exists without any express statutory sanction and in the face of a specific requirement of the statutes, or of the constitution itself, that all property be taxed.³

CUMULATIVE SUPPLEMENT

Cases:

A state that owns property outside its territorial boundaries cannot assert immunity from taxation by the jurisdiction in which that property lies, such as another state. [Joiner v. Pinellas County](#), 279 So. 3d 860 (Fla. 2d DCA 2019).

[END OF SUPPLEMENT]

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Footnotes

- 1 State v. Preston, 103 Or. 631, 206 P. 304, 23 A.L.R. 414 (1922); In re Taft's Estate, 110 Vt. 266, 4 A.2d 634, 120 A.L.R. 1382 (1939); City of Norfolk v. J.W. Perry Co., 108 Va. 28, 61 S.E. 867 (1908), *aff'd*, 220 U.S. 472, 31 S. Ct. 465, 55 L. Ed. 548 (1911).
- 2 Ensminger v. Powers, 108 U.S. 292, 2 S. Ct. 643, 27 L. Ed. 732 (1883); Burr v. City of Boston, 208 Mass. 537, 95 N.E. 208 (1911).
- 3 Town of West Hartford v. Water Com'rs of City of Hartford, 44 Conn. 360, 1877 WL 1878 (1877).

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XV. Persons, Property, and Organizations Exempt from Taxation

B. Public Bodies and Property

1. In General

§ 247. Property of state included

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2311

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 105](#) (Complaint, petition, or declaration—To enjoin enforcement of municipal tax levied against property owned and operated by state agency)

The exemption of state property extends to the property of all public departments and agencies of the state¹ even though the title is in a board of trustees or in a separate corporation as is often the case with a state university or other state institution.² The test is whether the institution's real property is so thoroughly under the control of the State that the institution's property effectively functions as state property.³ The court must examine the terms of the agreements involved and determine who holds the essential indicia of ownership.⁴

The exemption also extends to lands bought by a State at a sale for nonpayment of taxes and held subject to the former owner's right of redemption.⁵ When lands have been sold by the State, if they have been paid for in full and only the bare legal title remains in the state, the lands themselves are taxable; however, when a portion of the purchase money remains to be paid, or there are other conditions to be performed, only the interest of the purchaser can be taxed.⁶ An exemption of "property belonging

to the state" has been held to extend to property held by a county for the express purpose of aiding or facilitating the discharge of governmental functions.⁷ Such exemptions do not, however, extend to property which belongs to a private corporation even though used for strictly public purposes.⁸

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Footnotes

- 1 [Pennsylvania State University v. Derry Tp. School Dist.](#), 557 Pa. 91, 731 A.2d 1272 (1999).
- 2 [Auditor General v. Regents of the University](#), 83 Mich. 467, 47 N.W. 440 (1890); [Appeal of University of North Carolina](#), 300 N.C. 563, 268 S.E.2d 472 (1980); [Utah State Retirement Office v. Salt Lake County](#), 780 P.2d 813 (Utah 1989).
- 3 [Pacific Grove-Asilomar Operating Corp. v. County of Monterey](#), 43 Cal. App. 3d 675, 117 Cal. Rptr. 874 (1st Dist. 1974); [Pennsylvania State University v. Derry Tp. School Dist.](#), 557 Pa. 91, 731 A.2d 1272 (1999).
- 4 [Mayhew Tech Center, Phase II v. County of Sacramento](#), 4 Cal. App. 4th 497, 5 Cal. Rptr. 2d 702 (3d Dist. 1992).
- 5 [Rich v. Braxton](#), 158 U.S. 375, 15 S. Ct. 1006, 39 L. Ed. 1022 (1895).
- 6 [Dorn v. Baker](#), 96 Cal. 206, 31 P. 37 (1892).
- 7 [O'Berry v. Mecklenburg County](#), 198 N.C. 357, 151 S.E. 880, 67 A.L.R. 1304 (1930).
- 8 [Board of Trustees of Gate City Guard v. City of Atlanta](#), 113 Ga. 883, 39 S.E. 394 (1901); [Powers v. Harvey](#), 81 R.I. 378, 103 A.2d 551 (1954).

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XV. Persons, Property, and Organizations Exempt from Taxation

B. Public Bodies and Property

1. In General

§ 248. Property of municipal corporations

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2311](#), [2315](#)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 107](#) (Complaint, petition, or declaration—Allegation—Wrongful assessment of property owned by municipal corporation)

Generally, the property of a municipal corporation used for governmental purposes is exempt from taxation by the State or county in which it is situated in the absence of an express legislative requirement to the contrary¹ whether within or without the municipality by which it is owned.² At times, this exemption is made the express subject of constitutional or statutory provisions.³

A municipal corporation may levy taxes upon its own land which it has let to private parties for a long term on an annual rental. Such a lease carries with it no implied covenant of freedom from municipal taxation.⁴ Moreover, property owned by an agent of the city is not considered public property so as to be exempt from taxation.⁵

Footnotes

- 1 [City of Idaho Falls v. Pfost](#), 53 Idaho 247, 23 P.2d 245 (1933); [City of Louisville v. McAteer](#), 26 Ky. L. Rptr. 425, 81 S.W. 698 (Ky. 1904); [Town of Embden v. Madison Water Dist.](#), 1998 ME 154, 713 A.2d 328 (Me. 1998); [Collector of Taxes of Milton v. City of Boston](#), 278 Mass. 274, 180 N.E. 116, 81 A.L.R. 1515 (1932); [Graham v. City of Detroit](#), 174 Mich. 538, 140 N.W. 949 (1913); [Pelouze v. City of Richmond](#), 183 Va. 805, 33 S.E.2d 767 (1945).
- 2 [§ 250](#).
- 3 [Thomas v. Alabama Mun. Elec. Authority](#), 432 So. 2d 470 (Ala. 1983); [Ford v. Orlando Utilities Com'n](#), 629 So. 2d 845 (Fla. 1994); [Chadwick v. City of Crawfordsville](#), 216 Ind. 399, 24 N.E.2d 937, 129 A.L.R. 469 (1940); [City of Osceola v. Board of Review of Clarke County](#), 490 N.W.2d 539 (Iowa 1992); [School Dist. of Berkeley v. Evans](#), 363 Mo. 208, 250 S.W.2d 499 (1952); [Avis Rent A Car System, Inc. v. Department of Revenue](#), 330 Or. 35, 995 P.2d 1163 (2000); [Petition of C M Corp.](#), 334 N.W.2d 675 (S.D. 1983); [City of Franklin v. Crystal Ridge, Inc.](#), 180 Wis. 2d 561, 509 N.W.2d 730 (1994).
- 4 [Hampton Beach Improvement Co. v. Town of Hampton](#), 77 N.H. 373, 92 A. 549 (1914); [Avis Rent A Car System, Inc. v. Department of Revenue](#), 330 Or. 35, 995 P.2d 1163 (2000); [City of Norfolk v. J.W. Perry Co.](#), 108 Va. 28, 61 S.E. 867 (1908), [aff'd](#), 220 U.S. 472, 31 S. Ct. 465, 55 L. Ed. 548 (1911).
- 5 [Columbus City School Dist. Bd. of Edn. v. Zaino](#), 90 Ohio St. 3d 496, 2001-Ohio-5, 739 N.E.2d 783 (2001).

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71 Am. Jur. 2d State and Local Taxation § 249

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State and Local Taxation

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Part Four. Exemptions from Taxation

XV. Persons, Property, and Organizations Exempt from Taxation


B. Public Bodies and Property

1. In General

§ 249. Property of municipal corporations—Property included; municipally owned utilities

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2311](#), [2315](#)

A.L.R. Library

[When Is Property Owned by State or Local Governmental Body Put to Public Use So As to Be Eligible for Property Tax Exemption, 114 A.L.R.5th 561](#)

The rule of exemption of municipal property from taxation has been applied to various kinds of property, such as—

— a courthouse and jail.¹

— a municipal parking facility.²

— a municipal cemetery.³

— public parks.⁴

- the buildings and apparatus of a municipal fire department.⁵
- a municipal airport used exclusively for public purposes.⁶
- the landing place of a municipal ferry.⁷
- a theatre in a city hall.⁸
- an auditorium.⁹
- a municipally owned stadium.¹⁰
- a municipal gravel pit.¹¹
- a landfill owned by a county solid waste authority.¹²
- lands purchased by a city at a sale, under a judgment formerly obtained by the city against a defaulting officer, and not held for rent or profit, but in order to reimburse itself.¹³

While a number of courts have taken the view that public utilities operated by a municipal corporation for compensation, such as waterworks or gasworks, or an electric light plant, are taxable upon the theory that the implied exemption of publicly owned property extends only to property used for governmental and not merely for public purposes,¹⁴ there is, on the other hand, a significant quantum of authority to the effect that property owned by a municipal corporation is exempt if it is devoted to public purposes, whether these purposes are governmental or primarily for the benefit of its own citizens;¹⁵ accordingly, that municipally owned power and light plants, such as waterworks, gasworks, transit systems, and other public utilities distributing commodities and services to the public for compensation, which are for a public, although not for a governmental, use, are included within the meaning of statutes exempting the property of municipal subdivisions.¹⁶

CUMULATIVE SUPPLEMENT

Cases:

Municipal airport's unleased real property located within secure airfield, comprised of an office building and five hangars, was used exclusively for public purposes when it was unleased, and thus property was exempt from taxation under State Constitution during that time, where airport used property to store historical plane owned by airport, to house offices for city police department, and to store and stage equipment such as snow brooms, bulldozers, and trucks used for clearing runways during snow and ice events. [Ark. Const. art. 16, § 5](#). [City of Little Rock v. Ward, 2020 Ark. 399, 611 S.W.3d 471 \(2020\)](#).

Statute defining charitable purposes as functions that provide such community service that discontinuance could require allocation of public funds to continue them, for purpose of constitutional provision allowing portions of property used for such purposes to be exempt from taxation, applied to exempt city chamber of commerce from ad valorem taxation of its real property; chamber provided county with economic development and related functions that grew tax base, created jobs, and promoted general welfare of county and all its income was used for charitable purposes, and statute did not limit charitable purposes to services that provided relief for needy. [Fla. Const. art. 7, § 3\(a\)](#); [Fla. Stat. Ann. § 196.012\(7\)](#). [Crapo v. Gainesville Area Chamber of Commerce, Inc., 274 So. 3d 453 \(Fla. 1st DCA 2019\)](#), review denied, 2020 WL 618682 (Fla. 2020).

[END OF SUPPLEMENT]

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Footnotes

- 1 City of Louisville v. Commonwealth, 62 Ky. 295, 1 Duv. 295, 1865 WL 2239 (1865); Inhabitants of Worcester County v. City of Worcester, 116 Mass. 193, 1874 WL 9682 (1874).
- 2 Cleveland v. City of Detroit, 324 Mich. 527, 37 N.W.2d 625, 11 A.L.R.2d 171 (1949).
- 3 City of Louisville v. Nevin, 73 Ky. 549, 10 Bush 549, 1875 WL 6715 (1875); City of Wellsville v. Kinney, 66 Ohio St. 2d 136, 20 Ohio Op. 3d 156, 420 N.E.2d 123 (1981).
- 4 City of Owensboro v. Commonwealth, 105 Ky. 344, 20 Ky. L. Rptr. 1281, 49 S.W. 320 (1899); Burr v. City of Boston, 208 Mass. 537, 95 N.E. 208 (1911).
- 5 City of Owensboro v. Commonwealth, 105 Ky. 344, 20 Ky. L. Rptr. 1281, 49 S.W. 320 (1899).
- 6 City of Toledo v. Jenkins, 143 Ohio St. 141, 28 Ohio Op. 72, 54 N.E.2d 656 (1944).
- 7 People ex rel. New York v. Assessors of City of Brooklyn, 111 N.Y. 505, 19 N.E. 90 (1888).
- 8 State v. City of Columbia, 115 S.C. 108, 104 S.E. 337 (1920).
- 9 Commonwealth v. City of Richmond, 116 Va. 69, 81 S.E. 69 (1914).
- 10 Erie County v. Kerr, 49 A.D.2d 174, 373 N.Y.S.2d 913 (4th Dep't 1975).
- 11 City of Somerville v. City of Waltham, 170 Mass. 160, 48 N.E. 1092 (1898).
- 12 Delaware County Solid Waste Authority v. Berks County Bd. of Assessment Appeals, 534 Pa. 81, 626 A.2d 528 (1993).
- 13 Gibson v. Howe, 37 Iowa 168, 1873 WL 372 (1873).
- 14 Town of Newport v. Town of Unity, 68 N.H. 587, 44 A. 704 (1896); City of Knoxville v. Park City, 130 Tenn. 626, 172 S.W. 286 (1914); Village of Swanton v. Town of Highgate, 81 Vt. 152, 69 A. 667 (1908).
A hydroelectric plant operated by a consortium of irrigation districts was not exempt because its function was outside the purpose of the irrigation districts. *Boise-Kuna Irr. Dist. v. Idaho State Tax Com'n*, 119 Idaho 269, 805 P.2d 475 (1991).
- 15 Chadwick v. City of Crawfordsville, 216 Ind. 399, 24 N.E.2d 937, 129 A.L.R. 469 (1940); Sumner County Com'rs v. City of Wellington, 66 Kan. 590, 72 P. 216 (1903); Commonwealth v. Sinking Fund Com'rs of Lebanon Waterworks Co., 130 Ky. 61, 112 S.W. 1128 (1908); Smith v. City of Nashville, 88 Tenn. 464, 12 S.W. 924 (1890).
- 16 City of Norwich, Dept. of Public Utilities v. Town of Lebanon, 200 Conn. 697, 513 A.2d 77 (1986) (waterworks that also supplied customers outside the municipal limits); Ford v. Orlando Utilities Com'n, 629 So. 2d 845 (Fla. 1994) (electrical generator); Chadwick v. City of Crawfordsville, 216 Ind. 399, 24 N.E.2d 937, 129 A.L.R. 469 (1940) (light plant); Slay v. Louisiana Energy and Power Authority, 473 So. 2d 51 (La. 1985) (state-created power authorities); Portland Water Dist. v. Town of Standish, 1999 ME 161, 740 A.2d 564 (Me. 1999) (waterworks); Collector of Taxes of Milton v. City of Boston, 278 Mass. 274, 180 N.E. 116, 81 A.L.R. 1515 (1932) (property taken for the extension of a city's rapid transit facilities); Clark County v. City of Los Angeles, 91 Nev. 309, 535 P.2d 158 (1975); Taylor v. Davenport, 281 S.C. 497, 316 S.E.2d 389 (1984) (electrical plant); Village of Hardwick v. Town of Wolcott, 98 Vt. 343, 129 A. 159, 39 A.L.R. 1222 (1925); Commonwealth v. City of Richmond, 116 Va. 69, 81 S.E. 69 (1914).

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State and Local Taxation

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Part Four. Exemptions from Taxation

XV. Persons, Property, and Organizations Exempt from Taxation

B. Public Bodies and Property

1. In General

§ 250. Property of municipal corporations—Property outside municipal limits

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2311](#), [2315](#)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 106](#) (Petition or application—To state administrative agency—To set aside assessment of municipal property located outside municipality's territorial boundaries)

Generally, the property of a municipal corporation used for governmental purposes is exempt from taxation by the State or county in which it is situated, in the absence of an express legislative requirement to the contrary, whether such property is located within or without the corporate limits of the municipality by which it is owned.¹ However, if such property is used for a nongovernmental function, it is not exempt.² Property of a municipal corporation located in another state from that in which the corporation owning the property is situated is, in the absence of agreement, not exempt from taxation where located.³ A constitutional provision exempting all municipally owned property, including that located without the municipal limits, is not invalid merely because it may work hardships to certain privately owned property, for the people must be presumed to have considered the natural and inevitable consequences of their action in adopting the constitutional provision.⁴

Footnotes

- 1 City of Norwich, Dept. of Public Utilities v. Town of Lebanon, 200 Conn. 697, 513 A.2d 77 (1986); Ford v. Orlando Utilities Com'n, 629 So. 2d 845 (Fla. 1994); Town of Embden v. Madison Water Dist., 1998 ME 154, 713 A.2d 328 (Me. 1998); People ex rel. New York v. Assessors of City of Brooklyn, 111 N.Y. 505, 19 N.E. 90 (1888); Village of Swanton v. Town of Highgate, 81 Vt. 152, 69 A. 667 (1908).
- 2 Ford v. Orlando Utilities Com'n, 629 So. 2d 845 (Fla. 1994); City of Providence v. Killoran, 447 A.2d 369 (R.I. 1982).
- 3 State v. Holcomb, 85 Kan. 178, 116 P. 251 (1911) (water supply); State v. City of Hudson, 231 Minn. 127, 42 N.W.2d 546 (1950) (interstate bridge).
- 4 City and County of San Francisco v. McGovern, 28 Cal. App. 491, 152 P. 980 (3d Dist. 1915).

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71 Am. Jur. 2d State and Local Taxation § 251

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Part Four. Exemptions from Taxation

XV. Persons, Property, and Organizations Exempt from Taxation


B. Public Bodies and Property

1. In General

§ 251. Property of municipal corporations—What is "municipal corporation" within meaning of exemption provision

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2311](#), [2315](#)

The word "municipal" is said to have two meanings, one of which is "pertaining to the internal government of a state or nation," and in that sense, every corporation formed for governmental purposes is a municipal corporation; however, in its primary sense, "municipal" means "pertaining to a town or city or to its local government," and it is in this latter sense that the term as used in an exemption of municipal corporations from taxation is often construed.¹

The expression "municipal corporations" as used in tax exemption enactments has been held to include park, water, sanitary,² and school districts³ but not counties,⁴ irrigation districts,⁵ a port authority,⁶ or religious corporations.⁷

A water company organized by a special act of the legislature, not created by municipal charter and not enjoying any of the general powers granted municipalities, was not a municipal corporation for purposes of exemption.⁸ The same was true for a state-chartered electrical authority.⁹ However, an airport authority has been included in the definition of a political subdivision so as to be exempt from taxation.¹⁰

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Footnotes

- 1 Wells v. Housing Authority of City of Wilmington, 213 N.C. 744, 197 S.E. 693 (1938).
- 2 Sachem's Head Property Owners' Ass'n v. Town of Guilford, 112 Conn. 515, 152 A. 877 (1931) (water district); People ex rel. Carr v. Sanitary Dist. of Chicago, 302 Ill. 350, 134 N.E. 733 (1922) (sanitary district); People ex rel. Wilson v. Salomon, 51 Ill. 37, 1869 WL 5267 (1869) (park district).
- 3 Egan Independent Consol. School Dist. No. 1 of Moody County v. Minnehaha County, 65 S.D. 32, 270 N.W. 527, 108 A.L.R. 572 (1936).
- 4 City of Los Angeles v. Riley, 6 Cal. 2d 621, 59 P.2d 137 (1936); O'Berry v. Mecklenburg County, 198 N.C. 357, 151 S.E. 880, 67 A.L.R. 1304 (1930).
- 5 State v. Yuma Irr. Dist., 55 Ariz. 178, 99 P.2d 704 (1940); Lewiston Orchards Irr. Dist. v. Gilmore, 53 Idaho 377, 23 P.2d 720 (1933); State ex rel. Goshen Irr. Dist. v. Hunt, 49 Wyo. 497, 57 P.2d 793 (1936).
- 6 State ex rel. Wagner v. St. Louis County Port Authority, 604 S.W.2d 592 (Mo. 1980).
- 7 Southern Assembly v. Palmer, 166 N.C. 75, 82 S.E. 18 (1914).
- 8 International Water Co. v. Town of Holland, 161 Vt. 584, 641 A.2d 347 (1993).
- 9 Thomas v. Alabama Mun. Elec. Authority, 432 So. 2d 470 (Ala. 1983).
- 10 York County v. Peninsula Airport Com'n, 235 Va. 477, 369 S.E.2d 665 (1988).

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Part Four. Exemptions from Taxation

XV. Persons, Property, and Organizations Exempt from Taxation

B. Public Bodies and Property

1. In General

§ 252. Property acquired by another taxing unit for delinquent taxes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2311, 2315

Although there is authority to the contrary,¹ there is a significant quantum of authority holding that property acquired by a taxing unit in the enforcement of its delinquent taxes, and held by it for purposes of ultimate disposition to realize the taxes owing to such taxing unit, is exempt from taxation² as property held not in a proprietary capacity but in a governmental capacity and for public purposes or public use.³ The theory upon which such holdings are founded is that the collection or the realization of delinquent taxes is a public purpose within the constitutional or statutory provisions exempting from taxation property held for public purposes.⁴

However, property obtained through the civil forfeiture provisions of criminal law which is held for eventual sale does not serve a public purpose and is not exempt.⁵

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Footnotes

- ¹ [Conley v. Hawley](#), 2 Cal. 2d 23, 38 P.2d 408 (1934).
- ² [Pulaski County v. Carriage Creek Property Owners Imp. Dist.](#) No. 639, 319 Ark. 12, 888 S.W.2d 652 (1994); [Grand River Drainage Dist. of Cass and Bates Counties v. Reid](#), 341 Mo. 1246, 111 S.W.2d 151 (1937); [City of Austin v. Sheppard](#), 144 Tex. 291, 190 S.W.2d 486, 162 A.L.R. 1116 (1945); [Williams v. School Dist. No. 32 in Fremont County](#), 56 Wyo. 1, 102 P.2d 48 (1940).

- 3 Pulaski County v. Carriage Creek Property Owners Imp. Dist. No. 639, 319 Ark. 12, 888 S.W.2d 652 (1994);
Grand River Drainage Dist. of Cass and Bates Counties v. Reid, 341 Mo. 1246, 111 S.W.2d 151 (1937).
- 4 Pulaski County v. Carriage Creek Property Owners Imp. Dist. No. 639, 319 Ark. 12, 888 S.W.2d 652 (1994);
City of Austin v. Sheppard, 144 Tex. 291, 190 S.W.2d 486, 162 A.L.R. 1116 (1945).
- 5 Application of City of Wichita, 255 Kan. 838, 877 P.2d 437 (1994).

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Part Four. Exemptions from Taxation

XV. Persons, Property, and Organizations Exempt from Taxation

B. Public Bodies and Property

1. In General

§ 253. Public securities

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2311](#), [2314](#), [2316](#)

The tax statutes may expressly subject public securities to taxation,¹ in the absence of any local constitutional restriction in this regard. However, under a constitutional provision to the effect that the property of the State and its governmental subdivisions is exempt from taxation, taxation of bonds or warrants of municipalities and other government subdivisions of the State is not permissible.² In many states, such property is expressly exempt from taxation.³ In the absence, however, of any statutory or constitutional declaration, the authorities are not in agreement as to the taxability of bonds and warrants of the State and its political subdivisions. According to one view, in the absence of an express exemption, such bonds are subject to taxation in the same manner as other personal property.⁴

Generally, public securities issued by the State or its political subdivisions are considered as exempt from taxation either as instrumentalities of the government or because they are within the contemplation of the tax exemption statutes.⁵

The legislature of a state has the power to exempt state and municipal bonds from taxation because if such bonds are exempt from taxation, the State or municipality will be able to issue them on more favorable terms and may then save more money than it would lose by being deprived of the right to tax them.⁶

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Footnotes

- 1 Connecticut Bank and Trust Co. v. Tax Com'r, 178 Conn. 243, 423 A.2d 883 (1979).
2 In re Droll, 108 Neb. 85, 187 N.W. 876, 26 A.L.R. 543 (1922).
3 Rich v. State, 237 Ga. 291, 227 S.E.2d 761 (1976); Indiana Dept. of State Revenue v. Fort Wayne Nat. Corp.,
649 N.E.2d 109 (Ind. 1995); Bunk v. Port Authority of New York and New Jersey, 144 N.J. 176, 676 A.2d
118 (1996) (port authority bonds); Waddell v. Doughton, 194 N.C. 537, 140 S.E. 160, 55 A.L.R. 865 (1927);
Foster v. Roberts, 142 Tenn. 350, 219 S.W. 729, 9 A.L.R. 431 (1920); Bates v. State Bridge Commission,
109 W. Va. 186, 153 S.E. 305 (1930).
4 Hall v. Middlesex County Com'rs, 92 Mass. 100, 10 Allen 100, 1865 WL 3090 (1865); Cruse v. Fischl, 55
Mont. 258, 175 P. 878 (1918); State Nat. Bank v. City of Memphis, 116 Tenn. 641, 94 S.W. 606 (1906);
State v. Page, 100 W. Va. 166, 130 S.E. 426, 44 A.L.R. 501 (1925).
5 Mercantile Nat. Bank v. City of New York, 121 U.S. 138, 7 S. Ct. 826, 30 L. Ed. 895 (1887); Penick v.
Foster, 129 Ga. 217, 58 S.E. 773 (1907); In re Droll, 108 Neb. 85, 187 N.W. 876, 26 A.L.R. 543 (1922).
6 State ex rel. Orr v. Buder, 308 Mo. 237, 271 S.W. 508, 39 A.L.R. 1199 (1925); State Ed. Assistance Authority
v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

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Part Four. Exemptions from Taxation

XV. Persons, Property, and Organizations Exempt from Taxation

B. Public Bodies and Property

2. Character and Purpose of Use

§ 254. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2311

When property owned by the State or subordinate municipal bodies is expressly and unqualifiedly exempted from taxation by constitutional provision or statutory enactment, no tax can be levied against the property regardless of the use to which it is put.¹ According to this doctrine, where a tax exemption is directed solely to the "ownership" of public property, the use to which such property is put is immaterial.² Property owned by the State or a political subdivision which is leased to a private for-profit company is still exempt.³ Also, the lessee of city-owned property cannot be held liable for property taxes because such property is not subject to tax.⁴

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Footnotes

- 1 [Sacramento Mun. Utility Dist. v. County of Sonoma](#), 235 Cal. App. 3d 726, 1 Cal. Rptr. 2d 99 (1st Dist. 1991); [Trustees of Academy of Richmond County v. City Council of Augusta](#), 90 Ga. 634, 17 S.E. 61 (1892); [Sumner County Com'rs v. City of Wellington](#), 66 Kan. 590, 72 P. 216 (1903); [Platte Valley Public Power and Irr. Dist. v. Lincoln County](#), 144 Neb. 584, 14 N.W.2d 202, 155 A.L.R. 412 (1944); [Appeal of University of North Carolina](#), 300 N.C. 563, 268 S.E.2d 472 (1980); [Petition of C M Corp.](#), 334 N.W.2d 675 (S.D. 1983).
- 2 [L&B Real Estate v. Housing Authority of County of Los Angeles](#), 149 Cal. App. 4th 950, 57 Cal. Rptr. 3d 298 (2d Dist. 2007); [Platte Valley Public Power and Irr. Dist. v. Lincoln County](#), 144 Neb. 584, 14 N.W.2d 202, 155 A.L.R. 412 (1944); [Appeal of University of North Carolina](#), 300 N.C. 563, 268 S.E.2d 472 (1980);

County Bd. of Equalization of Salt Lake County v. Utah State Tax Com'n, 927 P.2d 176, 114 Ed. Law Rep. 653 (Utah 1996); Utah State Retirement Office v. Salt Lake County, 780 P.2d 813 (Utah 1989).

3 County Bd. of Equalization of Salt Lake County v. Utah State Tax Com'n, 927 P.2d 176, 114 Ed. Law Rep. 653 (Utah 1996); City of Franklin v. Crystal Ridge, Inc., 180 Wis. 2d 561, 509 N.W.2d 730 (1994).

4 Petition of C M Corp., 334 N.W.2d 675 (S.D. 1983).

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Part Four. Exemptions from Taxation

XV. Persons, Property, and Organizations Exempt from Taxation

B. Public Bodies and Property

2. Character and Purpose of Use

§ 255. Requisite that property be devoted to public use

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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West's Key Number Digest, [Taxation](#)  2311

A.L.R. Library

[When Is Property Owned by State or Local Governmental Body Put to Public Use So As to Be Eligible for Property Tax Exemption, 114 A.L.R.5th 561](#)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 108](#) (Answer—Defense—Property owned by public body not devoted to public use)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 109](#) (Answer—Defense—Property owned by private corporation but devoted to public use not exempt)

In many jurisdictions, statutory or constitutional provisions are in force exempting from taxation property held by public bodies and devoted to public use.¹ In these jurisdictions, while there is apparent authority otherwise,² the question of the exemption of property ordinarily depends upon the use to which the property is put, rather than upon its ownership,³ and property of a municipality which is held for purely private purposes and used for profit and gain may be taxed in the same manner as the property of individuals or private corporations.⁴ In those jurisdictions, to be entitled to the public use property tax exemption, the taxpayer must show that the property is dedicated to a public use, that it directly benefits an indefinite class of persons who are part of the public, and that it confers a benefit on society as a result of the benefit conferred on the persons directly served.⁵ Of course, public property is exempt from taxation if used for a predominantly public purpose and only incidentally for a private purpose.⁶

Under some authority, the property must be devoted to a governmental function.⁷ When a state agency acts outside its authorized governmental purposes, then its immunity from taxation is not automatic.⁸ Thus, where a city owned property which it leased to the United States Postal Service, the use was not exempt as the delivery of mail was outside the obligations of the city.⁹

Property owned by a municipality but devoted to a use which is entirely proprietary in its nature, or leased to private individuals, is not public property devoted exclusively to a public purpose and may not be exempted from taxation.¹⁰ Whenever public property is used by a private citizen for a private purpose, that use prevents exemption unless the use is incidental and de minimis.¹¹ However, when the lease is determined to serve a public purpose, the property may remain exempt. Use of exempt property by a private party under a lease agreement does not defeat the exemption if the private party's use is the public use underlying the exemption.¹² Thus, property leased to a private venture to establish an airport,¹³ to provide airport parking,¹⁴ to provide traveler services in an airport,¹⁵ to provide parking at a sports and entertainment complex,¹⁶ for electrical generation,¹⁷ and a lease of public property pursuant to an industrial bond act¹⁸ have all been held exempt because a public purpose was served thereby.

Although public use does not necessarily require public access,¹⁹ it is frequently observed that a use which excludes the general public does not serve a public purpose.²⁰ This is particularly so when use is restricted to a limited group of members.²¹ Thus, a parking lot providing free parking only to an agency's employees did not constitute a public use.²²

CUMULATIVE SUPPLEMENT

Cases:

For a tax exemption to apply to a private entity's use of public property, any private advantage must be incidental or subordinate. N.J. Const. art. 8, § 3 para. 3. *Gourmet Dining, LLC v. Union Township*, 243 N.J. 1, 233 A.3d 410 (2020).

Taxable status of property owned by governmental entity must be determined as question of fact by the use made of the property. Wyo. Const. art. 15, § 12; Wyo. Stat. Ann. § 39-11-105. *Eisele v. Town of Pine Bluffs*, 2020 WY 22, 458 P.3d 46 (Wyo. 2020).

[END OF SUPPLEMENT]

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Footnotes

- 1 Slay v. Louisiana Energy and Power Authority, 473 So. 2d 51 (La. 1985); Columbus City School Dist. Bd.
of Edn. v. Zaino, 90 Ohio St. 3d 496, 2001-Ohio-5, 739 N.E.2d 783 (2001).
In addition to public ownership, there must be a public use in order for real estate to be exempt from taxation.
Hackensack City v. Bergen County, 405 N.J. Super. 235, 963 A.2d 1236 (App. Div. 2009), also published
at, 24 N.J. Tax 390, 2009 WL 1044870 (Super. Ct. App. Div. 2009).
- 2 Town of Warrenton v. Warren County, 215 N.C. 342, 2 S.E.2d 463 (1939).
- 3 Crittenden Hosp. Ass'n v. Board of Equalization of Crittenden County, 330 Ark. 767, 958 S.W.2d 512 (1997);
Sachem's Head Ass'n v. Board of Tax Review of Town of Guilford, 190 Conn. 627, 461 A.2d 995 (1983);
Chadwick v. City of Crawfordsville, 216 Ind. 399, 24 N.E.2d 937, 129 A.L.R. 469 (1940); City of Osceola
v. Board of Review of Clarke County, 490 N.W.2d 539 (Iowa 1992); Application of City of Wichita, 255
Kan. 838, 877 P.2d 437 (1994); Howard D. Johnson Co. v. King, 351 A.2d 524 (Me. 1976); Metropolitan
Sports Facilities Com'n v. County of Hennepin, 561 N.W.2d 513 (Minn. 1997); City of Harrisburg v. School
Dist. of City of Harrisburg, 551 Pa. 295, 710 A.2d 49, 126 Ed. Law Rep. 252 (1998); Quirk v. Campbell,
302 S.C. 148, 394 S.E.2d 320 (1990); International Water Co. v. Town of Holland, 161 Vt. 584, 641 A.2d
347 (1993); State Bd. of Equalization v. City of Lander, 882 P.2d 844 (Wyo. 1994).
- 4 Robinson v. Indiana & Arkansas Lumber & Mfg. Co., 128 Ark. 550, 194 S.W. 870, 3 A.L.R. 1426 (1917);
Sebring Airport Authority v. McIntyre, 642 So. 2d 1072 (Fla. 1994); Application of City of Wichita, 255
Kan. 838, 877 P.2d 437 (1994); Interwest Aviation v. County Bd. of Equalization of Salt Lake County, 743
P.2d 1222 (Utah 1987).
- 5 Mountain View Community School, Inc. v. City of Rutland, 2011 VT 65, 27 A.3d 312 (Vt. 2011).
- 6 Dade County v. Pan Am. World Airways, Inc., 275 So. 2d 505 (Fla. 1973); City of Osceola v. Board of
Review of Clarke County, 490 N.W.2d 539 (Iowa 1992); Whitehouse v. Tracy, 72 Ohio St. 3d 178, 1995-
Ohio-212, 648 N.E.2d 503 (1995); International Water Co. v. Town of Holland, 161 Vt. 584, 641 A.2d 347
(1993); State Bd. of Equalization v. City of Lander, 882 P.2d 844 (Wyo. 1994).
- 7 City of Providence v. Killoran, 447 A.2d 369 (R.I. 1982) (does not include a recreation area).
- 8 Delaware County Solid Waste Authority v. Berks County Bd. of Assessment Appeals, 534 Pa. 81, 626 A.2d
528 (1993).
- 9 City of Oskaloosa v. Board of Review of City of Oskaloosa, 490 N.W.2d 542 (Iowa 1992).
- 10 Crittenden Hosp. Ass'n v. Board of Equalization of Crittenden County, 330 Ark. 767, 958 S.W.2d 512
(1997); Sebring Airport Authority v. McIntyre, 642 So. 2d 1072 (Fla. 1994); Walden v. Hillsborough County
Aviation Authority, 375 So. 2d 283 (Fla. 1979) (traveler services at an airport); Tri-County Public Airport
Authority v. Board of County Com'rs of Morris County, 245 Kan. 301, 777 P.2d 843 (1989); Anoka County
v. City of St. Paul, 194 Minn. 554, 261 N.W. 588, 99 A.L.R. 1137 (1935); Interwest Aviation v. County Bd.
of Equalization of Salt Lake County, 743 P.2d 1222 (Utah 1987).
- 11 Whitehouse v. Tracy, 72 Ohio St. 3d 178, 1995-Ohio-212, 648 N.E.2d 503 (1995).
- 12 Howard D. Johnson Co. v. King, 351 A.2d 524 (Me. 1976).
- 13 Dade County v. Pan Am. World Airways, Inc., 275 So. 2d 505 (Fla. 1973); City of Atlanta v. Clayton
County Bd. of Tax Assessors, 306 Ga. App. 381, 702 S.E.2d 704 (2010), cert. denied, (Feb. 28, 2011); City
of Osceola v. Board of Review of Clarke County, 490 N.W.2d 539 (Iowa 1992) (including on-site living
quarters for the airport manager).
The taxpayer, an airport jointly owned by cities, was not entitled to an ad valorem tax exemption on property
leased by the corporation for its business of refurbishing aircraft engines, under a provision of the statute
exempting certain property owned and operated as an airport by a political subdivision from ad valorem
taxation, where there was no evidence to support the argument that the corporation's business was essential
to the operation of the airport. In re Application of Strother Field Airport for Exemption from Ad Valorem
Taxation in Cowley County, Kansas, 46 Kan. App. 2d 316, 263 P.3d 182 (2011).
- 14 Matter of Fasi, 63 Haw. 624, 634 P.2d 98 (1981).
- 15 Charleston County Aviation Authority v. Wasson, 277 S.C. 480, 289 S.E.2d 416 (1982).
- 16 Metropolitan Sports Facilities Com'n v. County of Hennepin, 561 N.W.2d 513 (Minn. 1997).
- 17 Taylor v. Davenport, 281 S.C. 497, 316 S.E.2d 389 (1984).
- 18 Quirk v. Campbell, 302 S.C. 148, 394 S.E.2d 320 (1990).
- 19 City of Osceola v. Board of Review of Clarke County, 490 N.W.2d 539 (Iowa 1992).

- 20 City of Fayetteville v. Phillips, 320 Ark. 540, 899 S.W.2d 57, 100 Ed. Law Rep. 1185 (1995).
- 21 Holiday Island Suburban Imp. Dist. No. 1 of Carroll County v. Williams, 295 Ark. 442, 749 S.W.2d 314 (1988); Sachem's Head Ass'n v. Board of Tax Review of Town of Guilford, 190 Conn. 627, 461 A.2d 995 (1983).
- 22 State Teachers Retirement Bd. v. Kinney, 68 Ohio St. 2d 195, 22 Ohio Op. 3d 434, 429 N.E.2d 1069, 1 Ed. Law Rep. 1265 (1981).

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Part Four. Exemptions from Taxation

XV. Persons, Property, and Organizations Exempt from Taxation

B. Public Bodies and Property

2. Character and Purpose of Use

§ 256. Application to vacant or unused land

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2311

Real property acquired by or conveyed to a municipal corporation for municipal purposes is not exempt from taxation if it is unused and so not devoted to a public use.¹ Although it is unnecessary for a city, in order to claim an exemption, to devote immediately the property to a public or corporate use,² the exemption from taxation of municipal property cannot justly be extended to property not actually devoted to a public use or held with the design to devote it, within a reasonable time, to such use.³ Moreover, property held by a municipality in connection with property used for a public purpose, but in excess of the amount required for the proper conduct of such purpose, and not actually so used, is not within the provisions exempting from taxation property used for public purposes.⁴ In addition, property of a municipal corporation which is not devoted to any public or municipal use but is merely held for its value as property or for the income to be derived therefrom is taxable by any other body politic having jurisdiction thereof.⁵ However, it has also been held that vacant land owned by a city which is held to meet a future need is a public use which is exempt from taxation.⁶

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Footnotes

- 1 [Application of City of Wichita](#), 255 Kan. 838, 877 P.2d 437 (1994); [Village of Watkins Glen v. Hager](#), 140 Misc. 816, 252 N.Y.S. 146 (Sup 1931), [aff'd](#), 234 A.D. 904, 254 N.Y.S. 1016 (3d Dep't 1931).
- 2 [City of Eugene v. Keeney](#), 134 Or. 393, 293 P. 924 (1930).
- 3 [Collector of Taxes of Milton v. City of Boston](#), 278 Mass. 274, 180 N.E. 116, 81 A.L.R. 1515 (1932).

- 4 Collector of Taxes of Milton v. City of Boston, 278 Mass. 274, 180 N.E. 116, 81 A.L.R. 1515 (1932); Anoka County v. City of St. Paul, 194 Minn. 554, 261 N.W. 588, 99 A.L.R. 1137 (1935).
- 5 Application of City of Wichita, 255 Kan. 838, 877 P.2d 437 (1994); City of Louisville v. Commonwealth, 62 Ky. 295, 1 Duv. 295, 1865 WL 2239 (1865); Collector of Taxes of Milton v. City of Boston, 278 Mass. 274, 180 N.E. 116, 81 A.L.R. 1515 (1932); Hampton Beach Improvement Co. v. Town of Hampton, 77 N.H. 373, 92 A. 549 (1914).
- 6 City of Sarasota v. Mikos, 374 So. 2d 458 (Fla. 1979).

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Part Four. Exemptions from Taxation

XV. Persons, Property, and Organizations Exempt from Taxation

B. Public Bodies and Property

2. Character and Purpose of Use

§ 257. Income-producing property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2311

When a private enterprise is given the opportunity to occupy public property in part and make a profit, even though in so doing it serves not only the public, but the public interest and a public purpose, the property no longer meets the statutory exemption requirement that the property be used exclusively for a public purpose.¹ Where, however, the primary and principal use to which property is put is public, the mere fact that an income is incidentally derived from it does not affect its character as property devoted to a public use, within the meaning of a tax exemption provision.² On the other hand, where land is rented out for private purposes, and the proceeds are used for public purposes, the land will be taxable.³ Municipally owned public utility plants, if within the general scope of exemptions of municipal and public property,⁴ do not become subject to taxation because of the fact that in the operation of the plant, the city incidentally derives a revenue therefrom.⁵

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Footnotes

- ¹ [Parma Hts. v. Wilkins](#), 105 Ohio St. 3d 463, 2005-Ohio-2818, 828 N.E.2d 998 (2005).
- ² [Commonwealth v. Sinking Fund Com'rs of Lebanon Waterworks Co.](#), 130 Ky. 61, 112 S.W. 1128 (1908); [Anoka County v. City of St. Paul](#), 194 Minn. 554, 261 N.W. 588, 99 A.L.R. 1137 (1935); [People ex rel. New York v. Assessors of City of Brooklyn](#), 111 N.Y. 505, 19 N.E. 90 (1888); [Commonwealth v. City of Richmond](#), 116 Va. 69, 81 S.E. 69 (1914).
- ³ [City of Little Rock v. McIntosh](#), 319 Ark. 423, 892 S.W.2d 462 (1995).

- 4 § 249.
- 5 City of Logansport v. Public Service Commission, 202 Ind. 523, 177 N.E. 249, 76 A.L.R. 838 (1931)
 (power plant); Commonwealth v. City of Covington, 128 Ky. 36, 32 Ky. L. Rptr. 837, 107 S.W. 231 (1908)
 (waterworks); Clark County v. City of Los Angeles, 91 Nev. 309, 535 P.2d 158 (1975); Smith v. City of
 Nashville, 88 Tenn. 464, 12 S.W. 924 (1890) (waterworks).

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Part Four. Exemptions from Taxation

XV. Persons, Property, and Organizations Exempt from Taxation

C. Business and Industrial Organizations; Corporate Stock

1. In General

§ 258. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2309

The legislatures of many states, to encourage business and industry, have granted tax exemptions of varying scope in favor of corporations created by or organized in the state or operating therein.¹ Tax exemptions have particularly been granted in favor of railroad corporations operating in the state,² mutual insurance companies operated for the benefit of the members and not for profit,³ newly constructed multiple dwellings,⁴ and manufacturers and manufacturing industries.⁵ In some cases, statutes or constitutional provisions stipulate for payment of a production tax by producers of oil and gas in lieu of ad valorem taxes upon machinery, appliances, and equipment.⁶ Tax exemptions are sometimes granted in favor of private motor carriers and contract motor carriers based upon the class of business engaged in.⁷ Where the public interest is served, one business may be left untaxed and another taxed in order to promote the one or to restrict or suppress the other.⁸ Such exemptions do not generally apply to property leased to a qualifying enterprise.⁹

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- ¹ [Tipton County v. Rogers Locomotive & Machine Works](#), 103 U.S. 523, 26 L. Ed. 340, 1880 WL 18893 (1880); [In re Abbott Aluminum, Inc.](#), 269 Kan. 689, 8 P.3d 729 (2000); [Brown, Rudnick, Freed & Gesmer v. Board of Assessors of Boston](#), 389 Mass. 298, 450 N.E.2d 162 (1983); [Lake Shore & M.S. Ry. Co. v. City of Grand Rapids](#), 102 Mich. 374, 60 N.W. 767 (1894); [State v. Ritschel](#), 220 Minn. 578, 20 N.W.2d 673, 168 A.L.R. 274 (1945); [Board of Sup'rs of Lamar County v. Hattiesburg Coca-Cola Bottling Co.](#), 448 So.

2d 917 (Miss. 1984); *Schudy v. Cooper*, 824 S.W.2d 899 (Mo. 1992); *Long Island Lighting Co. v. Board of Assessors of County of Nassau*, 81 N.Y.2d 1029, 600 N.Y.S.2d 188, 616 N.E.2d 845 (1993); *Southern Valley Grain Dealers Ass'n v. Board of County Com'rs of Richland County*, 257 N.W.2d 425 (N.D. 1977); *Bain v. Department of Revenue*, 293 Or. 163, 646 P.2d 12 (1982).

2 *Williams v. Mayor and City Council of Baltimore*, 289 U.S. 36, 53 S. Ct. 431, 77 L. Ed. 1015 (1933); *Grand Rapids & I.R. Co. v. City of Grand Rapids*, 137 Mich. 587, 100 N.W. 1012 (1904).

3 *State v. Minnesota Farmers' Mut. Ins. Co.*, 130 Minn. 384, 153 N.W. 594 (1915).

4 *D.S. Alamo Associates v. Commissioner of Finance of City of New York*, 71 N.Y.2d 340, 525 N.Y.S.2d 823, 520 N.E.2d 542 (1988).

5 §§ 263 to 268.

6 *Gulf Refining Co. v. Board of Sup'rs of Jasper County*, 220 Miss. 225, 70 So. 2d 517 (1954); *Board of Equalization of Carter County v. Carter Oil Co.*, 1931 OK 579, 152 Okla. 99, 3 P.2d 816, 77 A.L.R. 1060 (1931).

7 *Hicklin v. Coney*, 290 U.S. 169, 54 S. Ct. 142, 78 L. Ed. 247 (1933).

8 *Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495, 57 S. Ct. 868, 81 L. Ed. 1245, 109 A.L.R. 1327 (1937).

9 *Schudy v. Cooper*, 824 S.W.2d 899 (Mo. 1992).

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Part Four. Exemptions from Taxation

XV. Persons, Property, and Organizations Exempt from Taxation

C. Business and Industrial Organizations; Corporate Stock

1. In General

§ 259. Scope of exemption

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2309

In some instances, apparently upon the principle that the property interest of shareholders in their shares and the property interest of a corporation in its capital stock are distinct property interests, the conclusion is reached that the exemption of property of the corporation does not exempt shares of stock in the hands of individual shareholders.¹ In other instances, an opposite conclusion is reached.² Thus, it is held that the exemption of the corporation cannot be evaded by a tax imposed nominally upon the shareholders but which must primarily be paid out of the funds of the corporation without any recourse other than an action against the individual stockholders to recover back the amounts paid on their account.³ There is likewise an inconsistency in the conclusion in cases involving the question whether the exemption of the capital or capital stock of a corporation warrants the exemption of stockholders from taxation on their shares. Some authorities hold that it does,⁴ others that it does not.⁵

The authorities are in disagreement as to the law in converse situations, namely, whether or not an exemption from taxation of the shares of stockholders exempts the corporation on its capital stock. In some cases, the opinion is expressed that an exemption from taxation of the shares of stock of a corporation exempts only such shares in the hands of the shareholders and does not exempt the corporation from taxation on its surplus or accumulated profits or even on its capital stock.⁶ In other cases, the express exemption of the shares from taxation, nothing else appearing, is deemed also to exempt the corporation itself from taxation.⁷

An exemption of the capital stock of a corporation from taxation extends only to the property which is necessary for the business for which the company was incorporated and which was acquired from its capital.⁸

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Footnotes

- 1 [Belo v. Forsyth County Com'rs](#), 82 N.C. 415, 1880 WL 3204 (1880).
- 2 [City of New Orleans v. Houston](#), 119 U.S. 265, 7 S. Ct. 198, 30 L. Ed. 411 (1886); [State of Tennessee v. Whitworth](#), 117 U.S. 129, 6 S. Ct. 645, 29 L. Ed. 830 (1886); [State v. Heppenheimer](#), 58 N.J.L. 633, 34 A. 1061 (N.J. Ct. Err. & App. 1896).
- 3 [City of New Orleans v. Houston](#), 119 U.S. 265, 7 S. Ct. 198, 30 L. Ed. 411 (1886).
- 4 [Bank of Commerce v. State of Tennessee](#), 161 U.S. 134, 16 S. Ct. 456, 40 L. Ed. 645 (1896).
- 5 [City of New Orleans v. Citizens' Bank of Louisiana](#), 167 U.S. 371, 17 S. Ct. 905, 42 L. Ed. 202 (1897); [State to Use of City of Memphis v. Home Ins. Co.](#), 91 Tenn. 558, 19 S.W. 1042 (1892), *aff'd*, 161 U.S. 198, 16 S. Ct. 476, 40 L. Ed. 669 (1896).
- 6 [Minneapolis & St. L. Ry. v. Gardner](#), 177 U.S. 332, 20 S. Ct. 656, 44 L. Ed. 793 (1900); [Shelby County v. Union & Planters' Bank](#), 161 U.S. 149, 16 S. Ct. 558, 40 L. Ed. 650 (1896).
- 7 [State v. Heppenheimer](#), 58 N.J.L. 633, 34 A. 1061 (N.J. Ct. Err. & App. 1896).
- 8 [City of New Orleans v. Citizens' Bank of Louisiana](#), 167 U.S. 371, 17 S. Ct. 905, 42 L. Ed. 202 (1897); [Bank of Commerce v. State of Tennessee](#), 104 U.S. 493, 4 Ky. L. Rptr. 137, 26 L. Ed. 810, 1881 WL 19828 (1881).

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Part Four. Exemptions from Taxation

XV. Persons, Property, and Organizations Exempt from Taxation


C. Business and Industrial Organizations; Corporate Stock

1. In General

§ 260. Increase in amount or value of stock or property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2310](#), [2334](#)

An exemption from taxation of the property of a corporation is not limited to the property owned by it when its charter was granted, in the absence of anything in the exemption provision indicating a contrary intention on the part of the legislature, but extends to all property which the corporation subsequently acquires by virtue of its charter and which is within the general class of property with respect to which its exemption was granted; it is exempt upon its aggregate property and consequently upon its aggregate capital stock increased in value over the amount of capital originally authorized and not merely upon its authorized capital.¹ However, an exemption from taxation of its capital stock and property contained in the charter of a corporation does not extend to property not necessary for the undertaking for which it was incorporated,² especially if such property was acquired under the authority of a subsequent act of the legislature containing no exemption clause.³

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Footnotes

- ¹ [Wright v. Georgia Railroad & Banking Co](#), 216 U.S. 420, 30 S. Ct. 242, 54 L. Ed. 544 (1910); [In re Abbott Aluminum, Inc.](#), 269 Kan. 689, 8 P.3d 729 (2000).
- ² [In re Abbott Aluminum, Inc.](#), 269 Kan. 689, 8 P.3d 729 (2000); [Camden & A.R. & Transp. Co. v. Commissioners of Mansfield Tp.](#), 23 N.J.L. 510, 1852 WL 3515 (N.J. Sup. Ct. 1852).
- ³ [Ford v. Delta & Pine Land Co.](#), 164 U.S. 662, 17 S. Ct. 230, 41 L. Ed. 590 (1897).

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Part Four. Exemptions from Taxation

XV. Persons, Property, and Organizations Exempt from Taxation

C. Business and Industrial Organizations; Corporate Stock

1. In General

§ 261. Exemption of inventory

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2309

Many jurisdictions exempt the stocks or inventory of retailers, merchants, or wholesalers from taxation.¹ Generally, property held primarily for rental or lease is not included in such an exemption² unless such rentals are merely occasional and infrequent.³ However, it has also been held under the terms of a statute that inventory held for sale or rental is exempt.⁴

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Footnotes

¹ [McElhanev Cattle Co. v. Smith](#), 132 Ariz. 286, 645 P.2d 801 (1982); [Tyler Equipment Corp. v. Town of Wallingford](#), 212 Conn. 167, 561 A.2d 936 (1989); [Kansas Enterprises, Inc. v. Frantz](#), 269 Kan. 436, 6 P.3d 857 (2000) (merchant's inventory); [Handyman Equipment Rental Co., Inc. v. City of Portland](#), 1999 ME 20, 724 A.2d 605 (Me. 1999); [Rowe-Reilly Corp. v. Tracy](#), 85 Ohio St. 3d 625, 1999-Ohio-326, 710 N.E.2d 694 (1999).

Gas reserves and retail appliances of a taxpayer, a corporation engaged primarily in the distribution and sale of natural gas to customers in the region, were exempt from ad valorem property taxation pursuant to the business inventory exemption statute, where the taxpayer's gas reserves and retail appliances were "tangible personal property," and the property met the "use" requirement under the exemption because the property was or would be stock in trade held for sale in the ordinary course of business. [Northwest Natural Gas. Co. v. Department of Revenue](#), 347 Or. 536, 226 P.3d 28 (2010).

- 2 Tyler Equipment Corp. v. Town of Wallingford, 212 Conn. 167, 561 A.2d 936 (1989); Kansas Enterprises,
Inc. v. Frantz, 269 Kan. 436, 6 P.3d 857 (2000).
3 Kansas Enterprises, Inc. v. Frantz, 269 Kan. 436, 6 P.3d 857 (2000).
4 Handyman Equipment Rental Co., Inc. v. City of Portland, 1999 ME 20, 724 A.2d 605 (Me. 1999).

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XV. Persons, Property, and Organizations Exempt from Taxation


C. Business and Industrial Organizations; Corporate Stock

1. In General

§ 262. Discrimination against shares of foreign corporations

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West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2335](#), [2336](#)

Enactments subjecting to taxation shares of stock of foreign corporations held by residents, while exempting from taxation shares of domestic corporations whose property is taxed by the State, are valid.¹ Such enactments do not violate the constitutional guaranty of equal protection of the laws² or the constitutional requirements of equality and uniformity.³

In the absence of statutory or constitutional provisions otherwise, the payment of a privilege tax by a foreign insurance corporation, measured by gross receipts, does not exempt it from a property tax.⁴

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Footnotes

- ¹ [Roberts v. Lipson](#), 231 Ga. 142, 200 S.E.2d 722 (1973); [In re Greenleaf](#), 184 Ill. 226, 56 N.E. 295 (1900); [Rehkopf v. Board of Equalization of Douglas County](#), 180 Neb. 90, 141 N.W.2d 462 (1966).
- ² [Darnell v. State of Indiana](#), 226 U.S. 390, 33 S. Ct. 120, 57 L. Ed. 267 (1912); [Coca-Cola Co. v. City of Atlanta](#), 152 Ga. 558, 110 S.E. 730, 23 A.L.R. 1339 (1922).
- ³ [City and County of Denver v. Hobbs' Estate](#), 58 Colo. 220, 144 P. 874 (1914); [Coca-Cola Co. v. City of Atlanta](#), 152 Ga. 558, 110 S.E. 730, 23 A.L.R. 1339 (1922); [Judy v. Beckwith](#), 137 Iowa 24, 114 N.W. 565 (1908); [Bacon v. Board of State Tax Com'rs](#), 126 Mich. 22, 85 N.W. 307 (1901).

4 Scottish Union & National Ins. Co. v. Bowland, 196 U.S. 611, 25 S. Ct. 345, 49 L. Ed. 619 (1905); New York Life Ins. Co. v. Board of Com'rs of Oklahoma County, 1932 OK 193, 155 Okla. 247, 9 P.2d 936, 82 A.L.R. 1425 (1932).

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2. Manufacturing

§ 263. Generally

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West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2332

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 110](#) (Complaint, petition, or declaration—To recover taxes levied against tax—exempt property—Wrongful assessment of raw materials used to manufacture lumber)

The legislature may exempt manufacturers and manufacturing enterprises from taxation as a matter of public or governmental policy when its powers in this respect are not limited by the state constitution, and the primary purpose is not to aid and benefit private persons for private ends but to benefit the public at large by increasing in the end the resources of the state in its taxable property through the establishment of new industries.¹ The rules of construction governing tax exemption generally² apply to such legislation.³ The person or corporation claiming an exemption must affirmatively show that he, she, or it is within the class to which the statutory exemption applies, and it is only where the exemption is shown to be granted in terms clear and unequivocal that the right of exemption can be maintained.⁴

Many of the statutes which grant exemptions from taxation to manufacturers and manufacturing corporations do so for the avowed purpose of inducing the location and continuance of manufacturing enterprises within the territory of the exempting

political body,⁵ and some of the acts, in order to insure the furtherance of this purpose, somewhat limit the field entitled to exemption by more specific provisions.⁶

Some jurisdictions exempt the materials, parts, and finished products of a manufacturer from taxation.⁷

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Footnotes

- 1 [McElhaney Cattle Co. v. Smith](#), 132 Ariz. 286, 645 P.2d 801 (1982); [William F. Sullivan & Co., Inc. v. Commissioner of Revenue](#), 413 Mass. 576, 602 N.E.2d 188 (1992); [Board of Sup'rs of Lamar County v. Hattiesburg Coca-Cola Bottling Co.](#), 448 So. 2d 917 (Miss. 1984); [Bain v. Department of Revenue](#), 293 Or. 163, 646 P.2d 12 (1982); [Crafts v. Ray](#), 22 R.I. 179, 46 A. 1043 (1900); [Duke Power Co. v. Bell](#), 156 S.C. 299, 152 S.E. 865 (1930).
- 2 [§§ 229 to 233](#).
- 3 [Standard Tailoring Co. v. City of Louisville](#), 152 Ky. 504, 153 S.W. 764 (1913); [State v. New Orleans Ry. & Light Co.](#), 116 La. 144, 40 So. 597 (1906); [Frederick Elec. Light & Power Co. v. City of Frederick City](#), 84 Md. 599, 36 A. 362 (1897); [William F. Sullivan & Co., Inc. v. Commissioner of Revenue](#), 413 Mass. 576, 602 N.E.2d 188 (1992).
- 4 [Standard Tailoring Co. v. City of Louisville](#), 152 Ky. 504, 153 S.W. 764 (1913); [Frederick Elec. Light & Power Co. v. City of Frederick City](#), 84 Md. 599, 36 A. 362 (1897); [Williams v. Park](#), 72 N.H. 305, 56 A. 463 (1903).
- 5 [Fernandes Super Markets, Inc. v. State Tax Commission](#), 371 Mass. 318, 357 N.E.2d 296 (1976); [Cummins Engine Co., Inc. v. Thomas](#), 267 S.C. 521, 230 S.E.2d 217 (1976).
- 6 [City of Columbus v. Muscogee Mfg. Co.](#), 165 Ga. 259, 140 S.E. 860 (1927).
- 7 [McElhaney Cattle Co. v. Smith](#), 132 Ariz. 286, 645 P.2d 801 (1982); [Murray Bakery Products, Inc. v. Board of Tax Assessors of Richmond County](#), 258 Ga. 484, 371 S.E.2d 393 (1988).

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C. Business and Industrial Organizations; Corporate Stock

2. Manufacturing

§ 264. Definitions and distinctions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2332

A.L.R. Library

[What constitutes manufacturing and who is a manufacturer under tax laws, 17 A.L.R.3d 7](#)

Manufacturing is the application of labor and skill which changes a material substantially into a new, different, and useful item.¹

Material having no commercial value for its intended use before processing has appreciable commercial value after processing by machinery.² The determining factor appears to be whether a product has gone through a substantial transformation in form and uses from its original state.³ Thus, the mere appropriation of a gift of nature does not constitute manufacturing, even though some human labor has to be applied to fit it for use, especially if its substance, general condition, and quality remain the same as before.⁴ It has also been stated that a person who combines different materials with a view to making a gain or profit is a manufacturer.⁵

CUMULATIVE SUPPLEMENT

Cases:

Taxpayers who owned property where wind turbine was built were "manufacturers," within meaning of statute granting exemption from tax for manufacturer who used any premises primarily for purpose of transforming raw materials into finished product for trade, where turbine was used exclusively for purpose of transforming raw materials—namely, wind—into finished product—namely, electricity. Gen.Laws 1956, § 44–3–3(20)(i), (22)(i). [DePasquale v. Cwiek](#), 129 A.3d 72 (R.I. 2016).

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Footnotes

- 1 [Todd County v. Bond Bros.](#), 300 Ky. 224, 188 S.W.2d 325 (1945); [Stewart Honeybee Products, Inc. v. Com., Bd. of Finance and Revenue](#), 525 Pa. 222, 579 A.2d 872 (1990).
- 2 [Shelby County Bd. of Assessment Appeals v. Gro-Green Chemical Co., Inc.](#), 602 S.W.2d 155 (Ky. 1980).
- 3 [McElhaney Cattle Co. v. Smith](#), 132 Ariz. 286, 645 P.2d 801 (1982); [State Dept. of Assessments and Taxation v. Consumer Programs, Inc.](#), 331 Md. 68, 626 A.2d 360 (1993); [William F. Sullivan & Co., Inc. v. Commissioner of Revenue](#), 413 Mass. 576, 602 N.E.2d 188 (1992).
- 4 [Commonwealth v. Northern Electric Light & Power Co.](#), 145 Pa. 105, 22 A. 839 (1891).
- 5 [Ares, Inc. v. Limbach](#), 51 Ohio St. 3d 102, 554 N.E.2d 1310 (1990).

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2. Manufacturing

§ 265. Manner of operation as factor

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

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A.L.R. Library

[What constitutes manufacturing and who is a manufacturer under tax laws, 17 A.L.R.3d 7](#)

When the manufacturing is done by independent contractors, the contractee is not a manufacturer within the meaning of tax exemption statutes.¹ It is asserted that the mere assembling of ready-made parts, or the incidental work necessary to adapt products manufactured elsewhere or by others to a particular use, does not constitute manufacturing.² However, it is equally true that manufacturing does not require that raw material only be used, in consequence of which manufactured articles may be incorporated into another product by a process of manufacture.³ Also, the fact that industrial processes do not result in a finished product ready for use, or that all the processes are not performed within the taxing jurisdiction, does not necessarily result in a holding that such processes do not constitute manufacturing or that the one performing such processes is not a manufacturer within the tax exemption statutes.⁴ It is equally apparent that the immunity from taxation of a corporation engaged in manufacture is not lost by the fact that it supplies its own raw material.⁵

Where the character of a business is such that it does not fall within the classification of "manufacturing," as used in tax exemption provisions, the mere volume or extent of the business or work performed does not necessarily make it "manufacturing."⁶ Moreover, merely doing some manufacturing as an incident to a general nonmanufacturing business will not confer upon a person or organization an exemption extended by general statutes to manufacturers⁷ although there is authority otherwise.⁸ When a corporation conducts both manufacturing and nonmanufacturing activities, manufacturing must constitute a substantial component of its operations in order for it to be exempt.⁹

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Footnotes

- 1 [People v. Horn Silver Min. Co.](#), 105 N.Y. 76, 11 N.E. 155 (1887), [aff'd](#), 143 U.S. 305, 12 S. Ct. 403, 36 L. Ed. 164 (1892); [Hazen Engineering Co. v. City of Pittsburgh](#), 189 Pa. Super. 531, 151 A.2d 855 (1959).
- 2 [Murray Bakery Products, Inc. v. Board of Tax Assessors of Richmond County](#), 258 Ga. 484, 371 S.E.2d 393 (1988); [People ex rel. John A. Roebling's Sons Co. v. Wemple](#), 138 N.Y. 582, 34 N.E. 386 (1893).
- 3 [People ex rel. L. E. Waterman Co. v. Morgan](#), 48 A.D. 395, 63 N.Y.S. 76 (3d Dep't 1900).
- 4 [City of Baltimore v. Price](#), 161 Md. 234, 155 A. 739 (1931).
- 5 [Commonwealth v. Juniata Coke Co.](#), 157 Pa. 507, 27 A. 373 (1893).
- 6 [H.M. Rowe Co. v. Beck](#), 149 Md. 251, 131 A. 509 (1925).
- 7 [Distilling & Cattle-Feeding Co. v. People](#), 161 Ill. 101, 43 N.E. 779 (1896); [People ex rel. New England Dressed Meat & Wool Co. v. Roberts](#), 155 N.Y. 408, 50 N.E. 53 (1898).
- 8 [Illinois Cent. R. Co. v. City of Paducah](#), 228 Ky. 65, 14 S.W.2d 172 (1929).
- 9 [Fernandes Super Markets, Inc. v. State Tax Commission](#), 371 Mass. 318, 357 N.E.2d 296 (1976).

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2. Manufacturing

§ 266. Stated purpose or actual activity as controlling

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2332

In determining whether a corporation is a manufacturing corporation within the meaning of statutes creating exemptions from taxation, it seems to be the rule that the business in which the capital of the corporation is invested, rather than the name by which it goes, or the objects for which it was formed as expressed in its charter or articles of incorporation, governs.¹ In other words, it is not so much what the charter says as what the corporation actually does that controls.² It is held otherwise, however, under statutes exempting corporations "organized" for manufacturing purposes, the view being taken that the purpose for which a corporation is organized must be ascertained by reference to the terms of its charter.³ Further, it has been held that a corporation not chartered for manufacturing purposes is not entitled to exemption from taxation as a manufacturer.⁴

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Footnotes

- ¹ [Evening Journal Ass'n v. State Board of Assessors](#), 47 N.J.L. 36, 1885 WL 522 (N.J. Sup. Ct. 1885).
- ² [Com. v. Wark Co.](#), 301 Pa. 150, 151 A. 786 (1930).
- ³ [People ex rel. Mercer v. Wyandot Elec. Light Co.](#), 306 Ill. 377, 137 N.E. 834 (1922); [Com. v. Paul W. Bounds Co.](#), 316 Pa. 29, 173 A. 633 (1934).
- ⁴ [Com. v. Paul W. Bounds Co.](#), 316 Pa. 29, 173 A. 633 (1934).

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2. Manufacturing

§ 267. Machinery, tools, apparatus, and like used in manufacturing

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2322](#), [2333](#)

Statutes are frequently found which exempt from property taxation machinery or other instruments of manufacturing.¹ The taxpayer seeking the exemption must be one using the equipment for manufacturing purposes whether it is by virtue of ownership, by lease, or by similar circumstances. Thus, suppliers and wholesalers who supply manufacturers with material used in manufacturing cannot claim the exemption.² To be exempt, the machinery must be used primarily in manufacturing, and be essential to the manufacturing process.³

When machinery is actually used in the operations of the company at its plant, the question is whether it is engaged in work in the nature of manufacturing. Thus, under an exemption of manufacturing machinery, the stone crushers of a quarry company, used for preparing stone for use as road material,⁴ and machines for cutting up scrap iron in the yards of a company engaged in collecting old steel and iron and cutting it into scrap for sale, have been held exempt.⁵ Similarly, tanks which are a necessary part of an oil refinery; which are used for storage and in which take place certain processes, functions, and changes, by both chemical and mechanical action; and which are a necessary part of the refinery and are essential to the production of refined oil are exempt.⁶ In addition, although it was conceded that whisky was completely manufactured in a company's distillery, the exemption was held to cover the bottling machinery in the company's bottling establishment.⁷ Testing equipment, used by a specialty metal heat-treating processor to ensure that required metallurgical changes had taken place, was exempt from tax as machinery or equipment used directly in manufacturing.⁸ Under a provision that exempted machinery and equipment used in egg production which is directly related and reasonably necessary to produce, package, and ship eggs, equipment in

a brooder house that was used to raise chickens that might in time lay eggs was not exempt.⁹ Chemicals used to manufacture aircraft parts constituted "equipment" for purposes of a statutory exemption for equipment used to create or expand processing or manufacturing plants because they served as instruments or tools to soften metal or to mill away excess metal.¹⁰

CUMULATIVE SUPPLEMENT

Cases:

Wind turbine that converted wind to electricity, which product was not sold to public but instead was sold directly to National Grid pursuant to standard power purchase agreement, did not come within statutory exception to definition of "manufacturer" exempt from property tax for non-regulated power producer that commenced commercial operation by selling electricity at retail or taking title to generating facilities as of designated date. Gen.Laws 1956, § 44–3–3(20)(i), (22)(i). [DePasquale v. Cwiek](#), 129 A.3d 72 (R.I. 2016).

Rentals of portable toilets, rentals of weatherized water and sewer boxes that were used to service the crew quarters, purchases of potable water for the bathroom facilities, and purchase of services to clean the well site septic systems, were an integral and essential part of taxpayer's natural gas production activity, and thus, qualified for the direct use exemption to the Consumers Sales and Service Tax; drilling operations could not have proceeded without such facilities. [W. Va. Code Ann. § 11-15-2\(b\)\(4\) \(A\)\(xiii\)](#). [Antero Resources Corporation v. Steager](#), 851 S.E.2d 527 (W. Va. 2020).

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Footnotes

- 1 [Gaddy v. Hummelstein Iron & Metal, Inc.](#), 266 Ark. 1, 585 S.W.2d 1 (1979); [David J. Joseph Co. v. City of Ashland](#), 223 Ky. 203, 3 S.W.2d 218 (1928); [State Dept. of Assessments and Taxation v. Consumer Programs, Inc.](#), 331 Md. 68, 626 A.2d 360 (1993); [AT & T Technologies, Inc. v. Limbach](#), 71 Ohio St. 3d 11, 1994-Ohio-90, 641 N.E.2d 177 (1994); [Gulf Oil Corp. v. City of Philadelphia](#), 357 Pa. 101, 53 A.2d 250, 172 A.L.R. 302 (1947).
- 2 [Pan Am. Sulphur Co. v. State Dept. of Assessments and Taxation](#), 251 Md. 620, 248 A.2d 354 (1968).
- 3 [AT & T Technologies, Inc. v. Limbach](#), 71 Ohio St. 3d 11, 1994-Ohio-90, 641 N.E.2d 177 (1994).
- 4 [Commonwealth v. W.J. Sparks Co.](#), 222 Ky. 606, 1 S.W.2d 1050 (1928).
- 5 [David J. Joseph Co. v. City of Ashland](#), 223 Ky. 203, 3 S.W.2d 218 (1928); [City of Baltimore v. Price](#), 161 Md. 234, 155 A. 739 (1931).
- 6 [Gulf Oil Corp. v. City of Philadelphia](#), 357 Pa. 101, 53 A.2d 250, 172 A.L.R. 302 (1947).
- 7 [Burke v. Stitzel-Weller Distillery](#), 284 Ky. 676, 145 S.W.2d 861 (1940).
- 8 [Arizona Dept. of Revenue v. Sonee Heat Treating Corp.](#), 178 Ariz. 278, 872 P.2d 682 (Tax Ct. 1994).
- 9 [Willamette Egg Farms, Inc. v. Department of Revenue](#), 331 Or. 327, 14 P.3d 609 (2000).
- 10 [Weiss v. Chem-Fab Corp.](#), 336 Ark. 21, 984 S.W.2d 395 (1999).

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C. Business and Industrial Organizations; Corporate Stock

2. Manufacturing

§ 268. Machinery, tools, apparatus, and like used in manufacturing— Partial use of equipment for manufacturing; proportional exemption

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2322](#), [2333](#)

Where a statute exempted machinery employed in the manufacture of furniture and other articles of wood, it has been held that machinery of a sawmill and woodworking establishment used for sawing lumber both for the market and the woodworking part of the business was exempt in proportion to the percentage of its use for the exempt purpose.¹ A similar result with regard to apportionment has been reached with regard to a newspaper publisher's machinery used partly for an exempt purpose.² However, where the exemption was of machinery employed in manufacturing articles used in the preparation of an agricultural product of the state for market, it has been held that the incidental use of the machinery for the making of other articles did not impair the full exemption claimed, the other being the principal business.³ It has also been held that when an organization qualifies as a manufacturer, all of its machinery and equipment is exempt, not just that used in manufacturing.⁴

CUMULATIVE SUPPLEMENT

Cases:

Under the great integral machine doctrine, which provides that property that would otherwise be regarded as taxable personal or real property will be exempt when incorporated as an integral part of exempt machinery, there is no requirement that one great integral machine be exclusively owned by a single company any more than that it be contained within the boundaries of a single municipality. [Veolia Energy Boston, Inc. v. Board of Assessors of Boston](#), 130 N.E.3d 767 (Mass. 2019).

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Footnotes

- 1 [Martin v. City of New Orleans, 38 La. Ann. 397, 1886 WL 4331 \(1886\).](#)
- 2 [American Newspapers v. McCardell, 174 Md. 56, 197 A. 574, 116 A.L.R. 1108 \(1938\).](#)
- 3 [State ex rel. Frederick v. Board of Assessors, 41 La. Ann. 534, 6 So. 337 \(1889\).](#)
- 4 [Fernandes Super Markets, Inc. v. State Tax Commission, 371 Mass. 318, 357 N.E.2d 296 \(1976\).](#)

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XV. Persons, Property, and Organizations Exempt from Taxation


D. Eleemosynary, Educational, Religious, and other Like Associations, Institutions, and Organizations

1. In General

§ 269. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2310](#), [2338](#)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 92](#) (Complaint, petition, or declaration—To recover payment of taxes on property of nonprofit, tax-exempt corporation—General form)

Although charitable institutions enjoy no inherent exemption from taxation and their property is taxable except so far as it is specifically exempted by constitutional or statutory enactment,¹ in a large number of the states, the property of charitable institutions is exempted from taxation by statute. The fundamental ground upon which the exemption is based is the benefit conferred upon the public by such institutions and the consequent relief, to some extent, of the burden imposed on the State to care for and advance the interest of its citizens.² Thus, the charitable exemption is predicated in part on the fact that the charity provides a service to the public that counterbalances the loss of revenue from taxation.³ When the statutes grant charitable institutions exemptions from taxation, the determination of the exemption in a particular case depends upon whether the organization claiming the exemption is in fact a charitable one and whether the property on which the exemption is claimed is being devoted to charitable purposes.⁴ Generally, an exemption of a charitable institution from taxation is to be strictly construed against the claim of exemption.⁵

Footnotes

- 1 Tri-Cities Children's Center, Inc. v. Board of Supervisors, 166 Cal. App. 3d 589, 212 Cal. Rptr. 541, 23 Ed. Law Rep. 978 (1st Dist. 1985); Supervisor of Assessments of Baltimore County v. Trustees of Bosley Methodist Church Graveyard, 293 Md. 208, 443 A.2d 91 (1982); Animal Rescue League of Boston v. Bourne's Assessors, 310 Mass. 330, 37 N.E.2d 1019, 138 A.L.R. 110 (1941); Bethesda General Hospital v. State Tax Commission, 396 S.W.2d 631 (Mo. 1965); Dove Lewis Memorial Emergency Veterinary Clinic, Inc. v. Department of Revenue, 301 Or. 423, 723 P.2d 320 (1986).
- 2 Board of Assessment Appeals v. AM/FM Intern., 940 P.2d 338 (Colo. 1997), as modified on denial of reh'g, (July 28, 1997); Matter of Tax Appeal of Central Union Church—Arcadia Retirement Residence, 63 Haw. 199, 624 P.2d 1346 (1981); Housing Southwest, Inc. v. Washington County, 128 Idaho 335, 913 P.2d 68 (1996); Congregational Sunday School & Pub. Soc. v. Board of Review, 290 Ill. 108, 125 N.E. 7 (1919); Des Moines Coalition for the Homeless v. Des Moines City Bd. of Review, 493 N.W.2d 860 (Iowa 1992); Community Memorial Home at Osakis, Minnesota, Inc. v. County of Douglas, 573 N.W.2d 83 (Minn. 1997); Young Men's Christian Ass'n of Columbia-Willamette v. Department of Revenue, 308 Or. 644, 784 P.2d 1086 (1989); Yorgason v. County Bd. of Equalization of Salt Lake County ex rel. Episcopal Management Corp., 714 P.2d 653 (Utah 1986).
The legislative purpose of the public use property tax exemption is to benefit the community as a whole by benefiting that indefinite part of the public served by public organizations. Vermont Studio Center, Inc. v. Town of Johnson, 188 Vt. 223, 2010 VT 59, 5 A.3d 904 (2010).
- 3 Board of Assessment Appeals v. AM/FM Intern., 940 P.2d 338 (Colo. 1997), as modified on denial of reh'g, (July 28, 1997); Housing Southwest, Inc. v. Washington County, 128 Idaho 335, 913 P.2d 68 (1996); Episcopal Camp Foundation, Inc. v. Town of Hope, 666 A.2d 108 (Me. 1995); Michigan United Conservation Clubs v. Lansing Tp., 423 Mich. 661, 378 N.W.2d 737 (1985); Dove Lewis Memorial Emergency Veterinary Clinic, Inc. v. Department of Revenue, 301 Or. 423, 723 P.2d 320 (1986); Appeal of Sioux Valley Hosp. Ass'n, 513 N.W.2d 562 (S.D. 1994).
- 4 United Church of Christ v. Town of West Hartford, 206 Conn. 711, 539 A.2d 573 (1988) (overruled on other grounds by, St. Joseph's Living Center, Inc. v. Town of Windham, 290 Conn. 695, 966 A.2d 188 (2009)); Chicago Patrolmen's Ass'n v. Department of Revenue, 171 Ill. 2d 263, 215 Ill. Dec. 655, 664 N.E.2d 52 (1996); Salvation Army v. Town of Standish, 1998 ME 75, 709 A.2d 727 (Me. 1998); Maryland State Fair & Agr. Soc., Inc. v. Supervisor of Assessments of Baltimore County, 225 Md. 574, 172 A.2d 132, 89 A.L.R.2d 1095 (1961); Massachusetts General Hospital v. Inhabitants of Belmont, 233 Mass. 190, 124 N.E. 21 (1919); Paper Mill Playhouse v. Millburn Tp., 95 N.J. 503, 472 A.2d 517, 42 A.L.R.4th 591 (1984); Riverview Place, Inc. v. Cass County By and Through Cass County Bd. of Com'rs, 448 N.W.2d 635 (N.D. 1989); Dove Lewis Memorial Emergency Veterinary Clinic, Inc. v. Department of Revenue, 301 Or. 423, 723 P.2d 320 (1986); Lutheran Hospital Ass'n of South Dakota v. Baker, 40 S.D. 226, 167 N.W. 148 (1918).
- 5 Tri-Cities Children's Center, Inc. v. Board of Supervisors, 166 Cal. App. 3d 589, 212 Cal. Rptr. 541, 23 Ed. Law Rep. 978 (1st Dist. 1985); United Church of Christ v. Town of West Hartford, 206 Conn. 711, 539 A.2d 573 (1988) (overruled on other grounds by, St. Joseph's Living Center, Inc. v. Town of Windham, 290 Conn. 695, 966 A.2d 188 (2009)); Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Ada County, 123 Idaho 410, 849 P.2d 83 (1993); Chicago Patrolmen's Ass'n v. Department of Revenue, 171 Ill. 2d 263, 215 Ill. Dec. 655, 664 N.E.2d 52 (1996); Animal Rescue League of Boston v. Bourne's Assessors, 310 Mass. 330, 37 N.E.2d 1019, 138 A.L.R. 110 (1941); Skyline Preservation Foundation v. County of Polk, 621 N.W.2d 727 (Minn. 2001); Hattiesburg Area Senior Services, Inc. v. Lamar County, 633 So. 2d 440 (Miss. 1994); Paper Mill Playhouse v. Millburn Tp., 95 N.J. 503, 472 A.2d 517, 42 A.L.R.4th 591 (1984); Corporation of Episcopal Church in Utah v. Utah State Tax Com'n, 919 P.2d 556 (Utah 1996); English Language Center, Inc. v. Town of Wallingford, 132 Vt. 327, 318 A.2d 180 (1974).

71 Am. Jur. 2d State and Local Taxation § 270

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State and Local Taxation

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Part Four. Exemptions from Taxation

XV. Persons, Property, and Organizations Exempt from Taxation

D. Eleemosynary, Educational, Religious, and other Like Associations, Institutions, and Organizations

1. In General

§ 270. Definition; character or purpose of institution

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2339

The word "charity" as commonly used implies any act of kindness or benevolence. In the legal sense, the term may be more fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons by bringing their hearts under the influence of education or religion; by relieving their bodies from disease, suffering, or constraint; by assisting them to establish themselves in life; or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government.¹ It is in this sense that the term is used in tax exemption statutes.² The purpose of the charitable exemption is to encourage charitable activities and thereby promote the general welfare.³

The words "benevolent" and "charitable" in a tax exemption statute are synonymous,⁴ and used interchangeably, although "benevolent" is the broader term.⁵ A "benevolent purpose" means an activity that serves the poor, distressed, or underprivileged; promotes the physical or mental welfare of youths or disadvantaged individuals; or relieves a government burden.⁶ As used in such statutes, the term "charity" may include substantially any scheme or effort to better the condition of society or any considerable part thereof.⁷ "Charitable" means some service of public good and welfare⁸ and encompasses more than almsgiving and assistance to the needy.⁹ The dissemination of useful information to benefit mankind may be charitable¹⁰ as may a wildlife sanctuary.¹¹ A charitable purpose will generally be found to exist if: (1) there is evidence of relief of human want manifested by obviously charitable acts different from the everyday purposes and activities of man in general; and (2) there is an expectation that a benefit will inure to the general public sufficient to justify the loss of tax revenue.¹²

However, an enterprise organized for profit cannot secure exemption from taxation as a charitable institution merely because, as an incident to its operation, it administers charity.¹³ There can be no pecuniary profit or benefit to officers or members.¹⁴ To come within a provision for the exemption of property used exclusively for charitable purposes, an organization must have charity as its primary, if not sole, object.¹⁵ It is not sufficient that the institution originated in a charitable gift or bequest, but it must actually dispense charity.¹⁶ The test of whether property is within an exemption from taxation of institutions of purely public charity is whether the property itself is dedicated to charity and used exclusively as an institution of purely public charity and not whether the organization owning it is one of purely public charity.¹⁷

CUMULATIVE SUPPLEMENT

Cases:

Direct service to the public is not required for a charitable property tax exemption; an organization can indirectly provide a benefit to the public by means of a service that is provided to certain individuals, and the obligation to provide the service by which the public benefits indirectly satisfies the requirement that the organization must be obligated to perform its stated purpose to the public and provide some service of public good. *N.H. Rev. Stat. Ann. § 72:23(V). Granite State Management & Resources v. City of Concord*, 75 A.3d 1112 (N.H. 2013).

[END OF SUPPLEMENT]

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Footnotes

- 1 *Am. Jur. 2d, Charities* §§ 1, 2.
- 2 *Monroe v. Baptist Health Care Foundation*, 772 So. 2d 414 (Ala. 2000); *City of Nome v. Catholic Bishop of Northern Alaska*, 707 P.2d 870 (Alaska 1985); *Board of Assessment Appeals v. AM/FM Intern.*, 940 P.2d 338 (Colo. 1997), as modified on denial of reh'g, (July 28, 1997); *United Church of Christ v. Town of West Hartford*, 206 Conn. 711, 539 A.2d 573 (1988) (overruled on other grounds by, *St. Joseph's Living Center, Inc. v. Town of Windham*, 290 Conn. 695, 966 A.2d 188 (2009)); *Matter of Tax Appeal of Central Union Church—Arcadia Retirement Residence*, 63 Haw. 199, 624 P.2d 1346 (1981); *International College of Surgeons v. Brenza*, 8 Ill. 2d 141, 133 N.E.2d 269, 61 A.L.R.2d 1027 (1956); *City of Lewiston v. Marcotte Congregate Housing, Inc.*, 673 A.2d 209 (Me. 1996); *New Habitat, Inc. v. Tax Collector of Cambridge*, 451 Mass. 729, 889 N.E.2d 414 (2008); *Wexford Medical Group v. City of Cadillac*, 474 Mich. 192, 713 N.W.2d 734 (2006); *Evangelical Retirement Homes of Greater St. Louis, Inc. v. State Tax Com'n of Missouri*, 669 S.W.2d 548 (Mo. 1984); *Housing Partnership v. Town of Rollinsford*, 141 N.H. 239, 683 A.2d 189 (1996); *City of Philadelphia v. Masonic Home of Pennsylvania*, 160 Pa. 572, 28 A. 954 (1894); *Wellsburg Unity Apartments, Inc. v. County Com'n of Brooke County*, 202 W. Va. 283, 503 S.E.2d 851 (1998).
Apartment complex owners which were engaged exclusively in the provision of low-income or moderate-income housing were primarily engaged in a public charitable function and thus were exempt from ad valorem taxes even if the apartment complex owners were in turn owned by purely for-profit entities with profit motives. *McLennan County Appraisal Dist. v. American Housing Foundation*, 343 S.W.3d 509 (Tex. App. Waco 2011), reh'g overruled, (May 11, 2011) and petition for review filed, (June 24, 2011).
- 3 *Sisters of Charity of Cincinnati, Ohio v. Bernalillo County*, 93 N.M. 42, 596 P.2d 255 (1979).
- 4 *Town of Poland v. Poland Spring Health Institute, Inc.*, 649 A.2d 1098 (Me. 1994); *Boston Chamber of Commerce v. Assessors of Boston*, 315 Mass. 712, 54 N.E.2d 199, 152 A.L.R. 174 (1944).
- 5 *Frisco Emp. Hospital Ass'n v. State Tax Commission of Mo.*, 381 S.W.2d 772 (Mo. 1964).
- 6 *Alpha Gamma Zeta House Ass'n v. Clay County Bd. of Equalization*, 1998 SD 101, 583 N.W.2d 167 (S.D. 1998).

- 7 Tharpe v. Central Georgia Council of Boy Scouts of America, 185 Ga. 810, 196 S.E. 762, 116 A.L.R. 373 (1938); Partnership for Affordable Housing, Ltd. Partnership Gamma v. Board of Review for City of Davenport, 550 N.W.2d 161 (Iowa 1996).
- 8 Manassas Lodge No. 1380, Loyal Order of Moose, Inc. v. Prince William County, 218 Va. 220, 237 S.E.2d 102 (1977).
- 9 Carroll Area Child Care Center, Inc. v. Carroll County Bd. of Review, 613 N.W.2d 252 (Iowa 2000); Banahan v. Presbyterian Housing Corp., 553 S.W.2d 48 (Ky. 1977); New England Legal Foundation v. City of Boston, 423 Mass. 602, 670 N.E.2d 152 (1996); Riverview Place, Inc. v. Cass County By and Through Cass County Bd. of Com'rs, 448 N.W.2d 635 (N.D. 1989); North Alamo Water Supply Corp. v. Willacy County Appraisal Dist., 804 S.W.2d 894 (Tex. 1991).
- 10 Herb Soc. of Am., Inc. v. Tracy, 71 Ohio St. 3d 374, 643 N.E.2d 1132 (1994).
- 11 North Manursing Wildlife Sanctuary, Inc. v. City of Rye, 48 N.Y.2d 135, 422 N.Y.S.2d 1, 397 N.E.2d 693 (1979).
- 12 College Corner, L.P. v. Department of Local Government Finance, 840 N.E.2d 905 (Ind. Tax Ct. 2006).
- 13 Carroll Area Child Care Center, Inc. v. Carroll County Bd. of Review, 613 N.W.2d 252 (Iowa 2000); Gray St. Infirmary v. City of Louisville, 23 Ky. L. Rptr. 1274, 65 S.W. 11 (Ky. 1901); Supervisor of Assessments of Montgomery County v. Group Health Ass'n, Inc., 308 Md. 151, 517 A.2d 1076 (1986); Harvard Community Health Plan, Inc. v. Board of Assessors of Cambridge, 384 Mass. 536, 427 N.E.2d 1159 (1981); Hattiesburg Area Senior Services, Inc. v. Lamar County, 633 So. 2d 440 (Miss. 1994); United Cerebral Palsy Ass'n of Greater Kansas City v. Ross, 789 S.W.2d 798 (Mo. 1990); Housing Partnership v. Town of Rollinsford, 141 N.H. 239, 683 A.2d 189 (1996); Herb Soc. of Am., Inc. v. Tracy, 71 Ohio St. 3d 374, 643 N.E.2d 1132 (1994); Wilson Area School Dist. v. Easton Hosp., 561 Pa. 1, 747 A.2d 877 (2000); North Alamo Water Supply Corp. v. Willacy County Appraisal Dist., 804 S.W.2d 894 (Tex. 1991).
- 14 Housing Partnership v. Town of Rollinsford, 141 N.H. 239, 683 A.2d 189 (1996).
- 15 York Rite Bodies of Freemasonry of Savannah v. Board of Equalization of Chatham County, 261 Ga. 558, 408 S.E.2d 699 (1991); People ex rel. Nelson v. Rockford Masonic Temple Bldg. Ass'n, 348 Ill. 567, 181 N.E. 428, 83 A.L.R. 768 (1932); Young Men's Christian Ass'n of Columbia-Willamette v. Department of Revenue, 308 Or. 644, 784 P.2d 1086 (1989); City of Richmond v. United Givers Fund of Richmond, Henrico & Chesterfield, Inc., 205 Va. 432, 137 S.E.2d 876 (1964).
- 16 Fredericka Home for the Aged v. San Diego County, 35 Cal. 2d 789, 221 P.2d 68 (1950); Young Men's Christian Ass'n of Columbia-Willamette v. Department of Revenue, 308 Or. 644, 784 P.2d 1086 (1989).
- 17 York Rite Bodies of Freemasonry of Savannah v. Board of Equalization of Chatham County, 261 Ga. 558, 408 S.E.2d 699 (1991); Iroquois Post No. 229, Am. Legion, Dept. of Ky. v. City of Louisville, 309 S.W.2d 353 (Ky. 1958).

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71 Am. Jur. 2d State and Local Taxation § 271

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State and Local Taxation

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Part Four. Exemptions from Taxation

XV. Persons, Property, and Organizations Exempt from Taxation

D. Eleemosynary, Educational, Religious, and other Like Associations, Institutions, and Organizations

1. In General

§ 271. Determination of whether entity is charity

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2339

The determination of charitable status is made on a case-by-case basis.¹ According to one court, in order to be eligible for a property tax exemption, an alleged charity must show that: (1) it is set up for the benefit of an indeterminate number of persons; (2) it has no capital, capital stock, or shareholders and earns no profits or dividends; (3) it derives its funds primarily from public and private charity; (4) it dispenses charity to all who need and apply for it, does not provide gain or profit in a private sense to any person connected with it, and does not appear to place obstacles in the way of dispensing charitable benefits; (5) the property is actually and factually used exclusively for the charitable purpose; and (6) the primary use of the property is for charity.² According to another view, to qualify for tax-exempt status under a statute establishing an exemption for real property owned by a corporation or an association organized or conducted exclusively for religious, charitable, hospital, or educational purposes or for the moral or mental improvement of men, women, or children: (1) the entity must be organized exclusively for the purposes enumerated in the statute; (2) the property must be used primarily for furtherance of such purposes; (3) no pecuniary profit, apart from reasonable compensation, may inure to the benefit of any officers, members, or employees; and (4) the entity may not be used simply as a guise for a profit-making operations.³ Under another state's constitutional provision for a real estate exemption, an entity must possess five characteristics to be considered a "purely public charity": (1) it advances a charitable purpose; (2) it donates or renders gratuitously a substantial portion of its services; (3) it benefits a substantial and indefinite class of persons who are legitimate subjects of charity; (4) it relieves the government of some of its burden; and (5) it operates entirely free from a private profit motive.⁴ Another state's statute setting forth exemptions of property of nonprofit organizations requires three criteria for exemption: (1) the owner of the property must be organized exclusively for the exempt

purpose; (2) its property must be actually and exclusively used for the tax-exempt purpose; and (3) its operation and use of its property must not be conducted for profit.⁵

While it has been held that an organization which is primarily supported by government subsidies and fees paid by individuals receiving services is not charitable,⁶ the weight of authority is to the effect that charitable status is not destroyed by the fact that an organization is partly funded by government subsidies.⁷

While political or advocacy groups generally fall outside the definition of charitable,⁸ a public interest law firm which provided pro bono legal services and brought test cases to vindicate legal rights was considered not political but charitable in nature.⁹

CUMULATIVE SUPPLEMENT

Cases:

An institution qualifies as a "charitable institution" for tax purposes when its core activities involve the provisions of its services on a nonprofit basis to those in need, without regard to race, creed, or ability to pay. R.C. § 5709.121. [Craftsmen Recreation Club, Inc. v. Testa, 2015-Ohio-1247, 31 N.E.3d 154](#) (Ohio Ct. App. 9th Dist. Summit County 2015).

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- 1 [York Rite Bodies of Freemasonry of Savannah v. Board of Equalization of Chatham County, 261 Ga. 558, 408 S.E.2d 699 \(1991\); Housing Southwest, Inc. v. Washington County, 128 Idaho 335, 913 P.2d 68 \(1996\).](#)
- 2 [Community Health Care, Inc. v. Illinois Dept. of Revenue, 369 Ill. App. 3d 353, 369 Ill. App. 3d 1055, 307 Ill. Dec. 519, 859 N.E.2d 1196 \(3d Dist. 2006\).](#)
- 3 [Rollings v. Shipman, 341 S.W.3d 777, 269 Ed. Law Rep. 401 \(Mo. Ct. App. E.D. 2011\); Pine Harbour, Inc. v. Dowling, 89 A.D.3d 1192, 932 N.Y.S.2d 239 \(3d Dep't 2011\).](#)
- 4 [National Church Residences of Mercer County v. Mercer County Bd. of Assessment Appeals, 925 A.2d 220 \(Pa. Commw. Ct. 2007\).](#)
- 5 [Society of Holy Child Jesus v. City of Summit, 418 N.J. Super. 365, 13 A.3d 886 \(App. Div. 2011\).](#)
- 6 [Yakima First Baptist Homes, Inc. v. Gray, 82 Wash. 2d 295, 510 P.2d 243 \(1973\).](#)
- 7 [Maine AFL-CIO Housing Development Corp. v. Town of Madawaska, 523 A.2d 581 \(Me. 1987\); State Dept. of Assessment and Taxation v. North Baltimore Center, Inc., 361 Md. 612, 762 A.2d 564 \(2000\); Mars Area School Dist. v. United Presbyterian Women's Ass'n of North America, 554 Pa. 324, 721 A.2d 360 \(1998\); Yorgason v. County Bd. of Equalization of Salt Lake County ex rel. Episcopal Management Corp., 714 P.2d 653 \(Utah 1986\).](#)
- 8 [New England Legal Foundation v. City of Boston, 423 Mass. 602, 670 N.E.2d 152 \(1996\); Michigan United Conservation Clubs v. Lansing Tp., 423 Mich. 661, 378 N.W.2d 737 \(1985\).](#)
- 9 [New England Legal Foundation v. City of Boston, 423 Mass. 602, 670 N.E.2d 152 \(1996\).](#)

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Part Four. Exemptions from Taxation

XV. Persons, Property, and Organizations Exempt from Taxation

D. Eleemosynary, Educational, Religious, and other Like Associations, Institutions, and Organizations

1. In General

§ 272. Right of foreign institutions to benefit of exemption

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2339

The courts generally construe the constitutional and statutory provisions granting charitable, benevolent, educational, and religious institutions exemptions from taxation to refer and apply only to the institutions of the state, and not to those of foreign states, particularly when they do not dispense their charity or benevolence in the state or devote their property therein to such purposes in the state.¹ Exemption to charitable, educational, and religious organizations is predicated upon the fact that they render service to the state, for which reason they are relieved of certain burdens of taxation. The effect of an exemption is equivalent to an appropriation. It cannot be said to be the intent of the legislature to make appropriation for the benefit or maintenance of foreign charities which, at best, have a remote chance only of benefiting the citizens of the State granting the exemption.² However, a foreign nonprofit corporation licensed to do business in the taxing state is denied equal treatment, in violation of the Equal Protection Clause of the 14th Amendment, where an exemption from state property taxes granted to domestic corporations is denied to the foreign corporation solely on the ground that it was organized under the laws of a sister state and where there is no greater administrative burden in evaluating a foreign than a domestic corporation under the law of the taxing state.³

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Footnotes

- 1 Grand Lodge Independent Order of Archery of State of Fla. v. City of Live Oak, 130 Fla. 386, 177 So. 738 (1937); Minot v. Winthrop, 162 Mass. 113, 38 N.E. 512 (1894); Humphreys v. State, 70 Ohio St. 67, 70 N.E. 957 (1904).
- 2 Morgan v. Atchison, T. & S.F. Ry. Co., 116 Kan. 175, 225 P. 1029, 34 A.L.R. 625 (1924).
- 3 WHY, Inc. v. Borough of Glassboro, 393 U.S. 117, 89 S. Ct. 286, 21 L. Ed. 2d 242 (1968).

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Part Four. Exemptions from Taxation

XV. Persons, Property, and Organizations Exempt from Taxation

D. Eleemosynary, Educational, Religious, and other Like Associations, Institutions, and Organizations

2. Character, Ownership, or Use of Property

§ 273. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2309](#), [2340](#), [2341](#)

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[Property tax: exemption of property leased by and used for purposes of otherwise tax-exempt body, 55 A.L.R.3d 430](#)

There are basically three types of charitable exemption schemes:

- (1) based solely on the ownership of the property;¹
- (2) based solely on the use of the property;² and
- (3) a combination of ownership and use, so that the property must both be owned by a charitable organization and used for an exempt purpose.³

If use is the test, ownership alone is not sufficient.⁴ When use alone is the test, the character of the owner may illuminate the purposes for which the property is used and should not be excluded from consideration.⁵ Under the use test, when an owner

derives no income or benefit from his or her property, but allows another to use it for a charitable purpose, the property is exempt.⁶

When both ownership and use are required, although there is authority to the contrary,⁷ the same entity need not be the owner and user provided that a tax-exempt entity owns the property, and another entity operates it for an exempt use.⁸ However, a private owner is not exempt merely because the owner leases his or her property to a nonprofit entity for a charitable use.⁹

CUMULATIVE SUPPLEMENT

Cases:

In determining whether property is occupied for charitable purposes, as required for a taxpayer to qualify for charitable property tax exemption, the extent of use is a factor, but is not decisive; however, if the charitable use of the property is merely incidental to a noncharitable use, the property will not be exempt from taxation. *M.G.L.A. c. 59, § 5. New England Forestry Foundation, Inc. v. Board of Assessors of Hawley*, 468 Mass. 138, 9 N.E.3d 310 (2014).

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Footnotes

- 1 [Town of Morristown v. Woman's Club of Morristown](#), 124 N.J. 605, 592 A.2d 216 (1991).
- 2 [Most Worshipful Grand Lodge of Free and Accepted Masons of State of Ala. v. Norred](#), 603 So. 2d 996 (Ala. 1992); [Connolly v. County of Orange](#), 1 Cal. 4th 1105, 4 Cal. Rptr. 2d 857, 824 P.2d 663, 72 Ed. Law Rep. 1089 (1992), as modified, (Mar. 26, 1992); [West Brandt Foundation, Inc. v. Carper](#), 652 P.2d 564 (Colo. 1982); [Highland Park Owners, Inc. v. Tracy](#), 71 Ohio St. 3d 405, 1994-Ohio-32, 644 N.E.2d 284 (1994) (Ohio has two statutes, with more rigorous use restrictions when the property is not owned by a charity).
- 3 [Kunes v. Samaritan Health Service](#), 121 Ariz. 413, 590 P.2d 1359 (1979); [United Church of Christ v. Town of West Hartford](#), 206 Conn. 711, 539 A.2d 573 (1988) (overruled on other grounds by, [St. Joseph's Living Center, Inc. v. Town of Windham](#), 290 Conn. 695, 966 A.2d 188 (2009)); [York Rite Bodies of Freemasonry of Savannah v. Board of Equalization of Chatham County](#), 261 Ga. 558, 408 S.E.2d 699 (1991); [Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Ada County](#), 123 Idaho 410, 849 P.2d 83 (1993); [Chicago Patrolmen's Ass'n v. Department of Revenue](#), 171 Ill. 2d 263, 215 Ill. Dec. 655, 664 N.E.2d 52 (1996); [Carroll Area Child Care Center, Inc. v. Carroll County Bd. of Review](#), 613 N.W.2d 252 (Iowa 2000); [In re University of Kansas School of Medicine-Wichita Medical Practice Ass'n from a Decision of Dist. Court of Shawnee County, Kansas](#), 266 Kan. 737, 973 P.2d 176 (1999); [Banahan v. Presbyterian Housing Corp.](#), 553 S.W.2d 48 (Ky. 1977); [City of Lewiston v. Marcotte Congregate Housing, Inc.](#), 673 A.2d 209 (Me. 1996); [Supervisor of Assessments of Baltimore County v. Keeler](#), 362 Md. 198, 764 A.2d 821 (2001); [Ladies Literary Club v. City of Grand Rapids](#), 409 Mich. 748, 298 N.W.2d 422 (1980); [Hattiesburg Area Senior Services, Inc. v. Lamar County](#), 633 So. 2d 440 (Miss. 1994); [United Cerebral Palsy Ass'n of Greater Kansas City v. Ross](#), 789 S.W.2d 798 (Mo. 1990); [Pittman v. Sarpy County Bd. of Equalization](#), 258 Neb. 390, 603 N.W.2d 447 (1999); [Housing Partnership v. Town of Rollinsford](#), 141 N.H. 239, 683 A.2d 189 (1996); [Paper Mill Playhouse v. Millburn Tp.](#), 95 N.J. 503, 472 A.2d 517, 42 A.L.R.4th 591 (1984) (for general charitable exemption); [Hapletah v. Assessor of Town of Fallsburg](#), 79 N.Y.2d 244, 582 N.Y.S.2d 54, 590 N.E.2d 1182 (1992); [Riverview Place, Inc. v. Cass County By and Through Cass County Bd. of Com'rs](#), 448 N.W.2d 635 (N.D. 1989); [True Christianity Evangelism v. Zaino](#), 91 Ohio St. 3d 117, 2001-Ohio-295, 742 N.E.2d 638 (2001); [Alpha Gamma Zeta House Ass'n v. Clay County Bd. of Equalization](#), 1998 SD 101, 583 N.W.2d 167 (S.D. 1998); [Methodist Hospitals of Memphis v. Assessment Appeals Com'n](#), 669 S.W.2d

- 305 (Tenn. 1984); *Twin Valley Community Services, Inc. v. Town of Randolph*, 170 Vt. 648, 756 A.2d 1233 (2000); *Wellsburg Unity Apartments, Inc. v. County Com'n of Brooke County*, 202 W. Va. 283, 503 S.E.2d 851 (1998); *Deutsches Land, Inc. v. City of Glendale*, 225 Wis. 2d 70, 591 N.W.2d 583 (1999).
- 4 *Board of Directors of Chicago Theological Seminary v. People of State of Illinois ex rel. Raymond*, 188 U.S. 662, 23 S. Ct. 386, 47 L. Ed. 641 (1903); *People ex rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363, 58 N.E.2d 33, 157 A.L.R. 851 (1944); *State v. Ritschel*, 220 Minn. 578, 20 N.W.2d 673, 168 A.L.R. 274 (1945); *Riverview Place, Inc. v. Cass County By and Through Cass County Bd. of Com'rs*, 448 N.W.2d 635 (N.D. 1989); *Deutsches Land, Inc. v. City of Glendale*, 225 Wis. 2d 70, 591 N.W.2d 583 (1999).
- 5 *West Brandt Foundation, Inc. v. Carper*, 652 P.2d 564 (Colo. 1982).
- 6 *Most Worshipful Grand Lodge of Free and Accepted Masons of State of Ala. v. Norred*, 603 So. 2d 996 (Ala. 1992).
- 7 *Immaculate Heart of Mary High School Inc. v. Anderson*, 96 Idaho 226, 526 P.2d 831 (1974).
- 8 *Christ the Good Shepherd Lutheran Church v. Mathiesen*, 81 Cal. App. 3d 355, 146 Cal. Rptr. 321 (1st Dist. 1978); *Sisters of Good Shepherd of City of Washington, D.C. v. District of Columbia*, 746 A.2d 310 (D.C. 2000); *In re University of Kansas School of Medicine-Wichita Medical Practice Ass'n from a Decision of Dist. Court of Shawnee County, Kansas*, 266 Kan. 737, 973 P.2d 176 (1999); *St. Joseph's Health Center Properties, Inc. v. Srogi*, 51 N.Y.2d 127, 432 N.Y.S.2d 865, 412 N.E.2d 921 (1980); *Case W. Res. Univ. v. Tracy*, 84 Ohio St. 3d 316, 1999-Ohio-355, 703 N.E.2d 1240, 131 Ed. Law Rep. 491 (1999) (by statute); *Twin Valley Community Services, Inc. v. Town of Randolph*, 170 Vt. 648, 756 A.2d 1233 (2000).
- 9 *Lincoln Street, Inc. v. Town of Springfield*, 159 Vt. 181, 615 A.2d 1028 (1992).

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71 Am. Jur. 2d State and Local Taxation § 274

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Part Four. Exemptions from Taxation

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2. Character, Ownership, or Use of Property

§ 274. "Owners" within meaning of tax exemption statutes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2309](#), [2340](#), [2341](#)

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[Charitable, educational, or religious tax exemption of property held in trust for tax-exempt organization, 94 A.L.R.2d 626](#)

When a word such as "owner" or "owned" is used in a restricted sense in a statute relating to exemption from taxation, it is presumed to have been employed in the same sense wherever it appears in that statute unless there is something in connection with the particular use to indicate otherwise.¹ A lessee is not the owner of real property within the meaning of a statute exempting from taxation property "owned" by designated persons or associations.² Some courts hold that the words "owned" or "belonging to" in a tax exemption statute are to be construed as comprehending an equitable as well as a legal ownership.³ There is, however, authority to the contrary.⁴

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Footnotes

- 1 [Animal Rescue League of Boston v. Bourne's Assessors](#), 310 Mass. 330, 37 N.E.2d 1019, 138 A.L.R. 110 (1941).
- 2 [Kunes v. Samaritan Health Service](#), 121 Ariz. 413, 590 P.2d 1359 (1979); [Lincoln Street, Inc. v. Town of Springfield](#), 159 Vt. 181, 615 A.2d 1028 (1992); [Douglas County Agricultural Soc. v. Douglas County](#), 104 Wis. 429, 80 N.W. 740 (1899).
- 3 [National Bank of Burlington v. Huneke](#), 250 Iowa 1030, 98 N.W.2d 7 (1959); [Kappa Kappa Gamma House Ass'n v. Percy](#), 92 Kan. 1020, 142 P. 294 (1914); [Engineering Soc. of Detroit v. City of Detroit](#), 308 Mich. 539, 14 N.W.2d 79 (1944) (holding modified on other grounds by, [Wexford Medical Group v. City of Cadillac](#), 474 Mich. 192, 713 N.W.2d 734 (2006)); [Friendship Village of Greater Milwaukee, Inc. v. City of Milwaukee](#), 181 Wis. 2d 207, 511 N.W.2d 345 (Ct. App. 1993).
The purported owners of apartments did not qualify as equitable owners of apartments for the purpose of the statute allowing a charitable organization that is a Community Housing Development Organization (CHDO) a property tax exemption; the purported owners, while a CHDO, only owned 1% of the property at issue. [American Housing Foundation v. Harris County Appraisal Dist.](#), 283 S.W.3d 76 (Tex. App. Houston 14th Dist. 2009).
- 4 [City of Hoboken v. East German Annual Conference of M.E. Church](#), 19 N.J. Misc. 266, 18 A.2d 718 (B.T.A. 1941); [Animal Rescue League of Boston v. Bourne's Assessors](#), 310 Mass. 330, 37 N.E.2d 1019, 138 A.L.R. 110 (1941); [City of St. Louis v. Wenneker](#), 145 Mo. 230, 47 S.W. 105 (1898); [Humphries v. Little Sisters of the Poor](#), 29 Ohio St. 201, 1876 WL 68 (1876).

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§ 275. Illegally held or owned property

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West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2309](#), [2340](#), [2341](#)

An organization asking an exemption of its property must come as an owner who has a title which the State is bound to recognize.¹ An exemption from taxation of the property of an organization will not be allowed to extend to property which that organization is not entitled to hold under its charter or under the enactments relating to such institutions.² A church, for example, is subject to all taxes on real estate which it is not entitled to own, to which other property of like character owned by others is subject, notwithstanding a statute exempting from taxation all property, real and personal, and the revenues derived therefrom, belonging to any religious society.³

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Footnotes

- ¹ [Evangelical Baptist Benev. & Missionary Soc. v. City of Boston](#), 204 Mass. 28, 90 N.E. 572 (1910); [Gunter v. City of Jackson](#), 130 Miss. 686, 94 So. 842, 27 A.L.R. 1043 (1923).
- ² [Gunter v. City of Jackson](#), 130 Miss. 686, 94 So. 842, 27 A.L.R. 1043 (1923); [State v. Atlantic City](#), 68 N.J.L. 385, 53 A. 399 (N.J. Ct. Err. & App. 1902).
- ³ [Gunter v. City of Jackson](#), 130 Miss. 686, 94 So. 842, 27 A.L.R. 1043 (1923).

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2. Character, Ownership, or Use of Property

§ 276. Use as test for purposes of exemption

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West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2309](#), [2340](#), [2341](#)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 104](#) (Answer—Defense—Taxpayer's building not property used by a religious society)

In a number of jurisdictions, constitutional or statutory provisions make the use of the property for charitable, religious, or other eleemosynary purposes the test of exemption.¹ Property belonging to a charitable institution is not exempt from taxation unless it is used for the purposes for which that institution was established.² Generally, in determining whether or not property falls within a tax exemption provision, the primary or dominant use, and not an incidental or secondary use, will control.³

Where the use of property for religious purposes is the test of exemption, it is not enough to exempt the property that the income derived therefrom is devoted to religious purposes, but the property itself must be used directly for such purposes.⁴ The same is true with respect to property of an educational institution,⁵ and other charitable organizations because, in one case, the property's direct and primary use was fundraising and not the charity itself.⁶

Vacant and unoccupied land belonging to an educational institution and not actually in use for any purpose is taxable.⁷ This is also true with respect to fraternal organizations,⁸ other benevolent organizations,⁹ and religious institutions.¹⁰

CUMULATIVE SUPPLEMENT

Cases:

All property should bear its share of the cost of government, and property which is exempt from taxation does not share in the burden, and therefore, in exchange for its exempt status, such property must confer a substitute substantial benefit on the public. *CAVU Co. v. Martinez*, 2014-NMSC-029, 332 P.3d 287 (N.M. 2014).

When considering the question of whether an educational institution uses its property in furtherance of or incidental to its educational purposes, as would qualify property for tax exemption, the focus of the inquiry should be on the relationship between the actual use of the property and the purpose of the institution. R.C. § 5709.121. *Cincinnati Community Kollel v. Testa*, 2013-Ohio-396, 985 N.E.2d 1236 (Ohio 2013).

[END OF SUPPLEMENT]

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Footnotes

- 1 § 273.
- 2 *Surtees v. Carlton Cove, Inc.*, 974 So. 2d 1013 (Ala. Civ. App. 2007); *Board of County Com'rs of Chaffee County v. Denver & R.G.R. Co. Employees' Relief Ass'n*, 70 Colo. 592, 203 P. 850, 22 A.L.R. 902 (1922); *York Rite Bodies of Freemasonry of Savannah v. Board of Equalization of Chatham County*, 261 Ga. 558, 408 S.E.2d 699 (1991); *Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Ada County*, 123 Idaho 410, 849 P.2d 83 (1993); *Most Worshipful Grand Lodge of Ancient Free and Accepted Masons of State of Illinois v. Department of Revenue*, 378 Ill. App. 3d 1069, 318 Ill. Dec. 897, 884 N.E.2d 1168 (4th Dist. 2007); *Carroll Area Child Care Center, Inc. v. Carroll County Bd. of Review*, 613 N.W.2d 252 (Iowa 2000); *Supervisor of Assessments of Baltimore County v. Keeler*, 362 Md. 198, 764 A.2d 821 (2001); *Rescue v. Christmas*, 298 S.W.3d 566 (Mo. Ct. App. W.D. 2009); *Housing Partnership v. Town of Rollinsford*, 141 N.H. 239, 683 A.2d 189 (1996); *Paper Mill Playhouse v. Millburn Tp.*, 95 N.J. 503, 472 A.2d 517, 42 A.L.R.4th 591 (1984); *Immanuel Baptist Church v. Glass*, 1972 OK 79, 497 P.2d 757, 55 A.L.R.3d 349 (Okla. 1972); *Alpha Gamma Zeta House Ass'n v. Clay County Bd. of Equalization*, 1998 SD 101, 583 N.W.2d 167 (S.D. 1998); *Smyth County Community Hosp. v. Town of Marion*, 259 Va. 328, 527 S.E.2d 401 (2000); *Yakima First Baptist Homes, Inc. v. Gray*, 82 Wash. 2d 295, 510 P.2d 243 (1973); *State v. McDowell Lodge, No. 112, A.F. & A.M.*, 96 W. Va. 611, 123 S.E. 561, 38 A.L.R. 31 (1924).
Any institution, irrespective of its charitable or noncharitable character, may take advantage of a tax exemption if it is making exclusive charitable use of its property. *First Baptist Church of Milford v. Wilkins*, 110 Ohio St. 3d 496, 2006-Ohio-4966, 854 N.E.2d 494 (2006).
- 3 § 277.
- 4 *City of Nome v. Catholic Bishop of Northern Alaska*, 707 P.2d 870 (Alaska 1985); *Supervisor of Assessments of Baltimore County v. Keeler*, 362 Md. 198, 764 A.2d 821 (2001); *Young Men's Christian Ass'n of Omaha v. Douglas County*, 60 Neb. 642, 83 N.W. 924 (1900); *Trustees of Property of Protestant Episcopal Church in New Mexico v. State Tax Commission*, 39 N.M. 419, 48 P.2d 786 (1935); *Wellsburg Unity Apartments, Inc. v. County Com'n of Brooke County*, 202 W. Va. 283, 503 S.E.2d 851 (1998).
- 5 *Jetton v. University of the South*, 208 U.S. 489, 28 S. Ct. 375, 52 L. Ed. 584 (1908); *Board of Directors of Chicago Theological Seminary v. People of State of Illinois ex rel. Raymond*, 188 U.S. 662, 23 S. Ct. 386, 47 L. Ed. 641 (1903); *People ex rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363, 58 N.E.2d

33, 157 A.L.R. 851 (1944); *Parsons Business College v. City of Kalamazoo*, 166 Mich. 305, 131 N.W. 553 (1911); *Benjamin Rose Institute v. Myers*, 92 Ohio St. 252, 110 N.E. 924 (1915).

6 *City of Nome v. Catholic Bishop of Northern Alaska*, 707 P.2d 870 (Alaska 1985).

7 *Parsons Business College v. City of Kalamazoo*, 166 Mich. 305, 131 N.W. 553 (1911); *Ramsey County v. Macalester College*, 51 Minn. 437, 53 N.W. 704 (1892); *Case W. Res. Univ. v. Tracy*, 84 Ohio St. 3d 316, 1999-Ohio-355, 703 N.E.2d 1240, 131 Ed. Law Rep. 491 (1999).

8 *Young Men's Christian Ass'n of Omaha v. Douglas County*, 60 Neb. 642, 83 N.W. 924 (1900).

9 *Deutsches Land, Inc. v. City of Glendale*, 225 Wis. 2d 70, 591 N.W.2d 583 (1999).

10 *Nugent v. Dilworth*, 95 Iowa 49, 63 N.W. 448 (1895); *St. George Antiochian Orthodox Christian Church v. Aggarwal*, 326 Md. 90, 603 A.2d 484 (1992); *Appeal of Emissaries of Divine Light*, 140 N.H. 552, 669 A.2d 802 (1995); *Faith Fellowship Ministries, Inc. v. Limbach*, 32 Ohio St. 3d 432, 513 N.E.2d 1340 (1987); *Corporation of Episcopal Church in Utah v. Utah State Tax Com'n*, 919 P.2d 556 (Utah 1996).

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2. Character, Ownership, or Use of Property

§ 277. Combined religious and secular use

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West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2309](#), [2340](#), [2341](#)

Although according to one line of authority, an exemption of religious institutions from taxation extends only to such parts of a church building or property as are used for religious purposes, and does not include those parts of the property used for other purposes,¹ another line of authority upholds the view that the primary use, and not a secondary or incidental use, will control.² If it is devoted primarily to a religious purpose, an incidental use for another purpose will not destroy the exemption.³ Applying this test, a building does not lose its character as a religious building because some part of it is incidentally used for some secular purpose connected with the church⁴ or is occasionally used for a social function.⁵ Cafeteria, lodging facilities, and parking facilities operated by a religious order in connection with their operation of a religious shrine were entitled to a tax exemption where such facilities were necessary for the use of people visiting and participating in programs sponsored at the shrine.⁶ On the other hand, an incidental use for religious purposes, of property whose primary use is for secular purposes, will not warrant exemption.⁷ The fact that a charitable organization's purpose and mission is religious will not deprive it of tax-exempt status.⁸ Once a taxpayer has been granted tax-exempt status as a religious organization, it cannot also claim multiple exemptions as another charitable organization.⁹

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Footnotes

- 1 Board of Foreign Missions of Methodist Episcopal Church v. Board of Assessors of City of Yonkers, 244 N.Y. 42, 154 N.E. 816 (1926).
A portion of church property that was leased to the board of education lost its property tax exemption because it was no longer actually and exclusively used for religious purposes. *Roman Catholic Archdiocese of Newark v. East Orange City*, 17 N.J. Tax 298, 1998 WL 420682 (1998), *aff'd*, 18 N.J. Tax 649, 2000 WL 949105 (Super. Ct. App. Div. 2000).
- 2 *People ex rel. Baldwin v. Jessamine Withers Home*, 312 Ill. 136, 143 N.E. 414, 34 A.L.R. 628 (1924); *Assessors of Boston v. Lamson*, 316 Mass. 166, 55 N.E.2d 215, 154 A.L.R. 886 (1944); *Ramsey County v. Church of the Good Shepherd*, 45 Minn. 229, 47 N.W. 783 (1891); *Fort Calhoun Baptist Church v. Washington County Bd. of Equalization*, 277 Neb. 25, 759 N.W.2d 475 (2009); *St. Paul's Church v. City of Concord*, 75 N.H. 420, 75 A. 531 (1910); *Watterson v. Halliday*, 77 Ohio St. 150, 82 N.E. 962 (1907).
A church taxpayer's property was actually used primarily for religious purposes, and thus, the taxpayer was entitled to a religious use property tax exemption for property used for walking, camping, and outdoor activities, for the particular year for which the exemption was sought, even though the land was also used by a shelter for abused women and children; the taxpayer conducted church activities on the land on at least 12 specific occasions identified by the pastor, use by the women's shelter was less frequent and the fellowship between the taxpayer and the shelter could have advanced the taxpayer's religious purpose, any use by the shelter was secondary to the taxpayer's own use of the land for religious purposes, the land was not used for profit, and the taxpayer's plan to construct a church facility on the land rose above a mere intention to develop, with the taxpayer holding three property-development meetings during the year in issue. *Grace Community Church Assemblies of God v. Illinois Dept. of Revenue*, 409 Ill. App. 3d 480, 351 Ill. Dec. 323, 950 N.E.2d 1151 (4th Dist. 2011).
- 3 *Trinidad v. Sagrada Orden de Predicadores, etc.*, 263 U.S. 578, 44 S. Ct. 204, 68 L. Ed. 458 (1924); *People ex rel. Baldwin v. Jessamine Withers Home*, 312 Ill. 136, 143 N.E. 414, 34 A.L.R. 628 (1924).
- 4 *Ramsey County v. Church of the Good Shepherd*, 45 Minn. 229, 47 N.W. 783 (1891).
- 5 *People ex rel. Carson v. Muldoon*, 306 Ill. 234, 137 N.E. 863, 28 A.L.R. 857 (1922).
- 6 *Shrine of Our Lady of Martyrs of Auriesville v. Board of Assessors of Town of Glen, Montgomery County*, 40 A.D.2d 75, 337 N.Y.S.2d 786 (3d Dep't 1972), *order aff'd*, 33 N.Y.2d 713, 349 N.Y.S.2d 993, 304 N.E.2d 563 (1973).
- 7 *People ex rel. Baldwin v. Jessamine Withers Home*, 312 Ill. 136, 143 N.E. 414, 34 A.L.R. 628 (1924); *Ramsey County v. Church of the Good Shepherd*, 45 Minn. 229, 47 N.W. 783 (1891).
- 8 *Salvation Army v. Town of Standish*, 1998 ME 75, 709 A.2d 727 (Me. 1998).
- 9 *Appeal of C.H.R.I.S.T., Inc.*, 122 N.H. 982, 455 A.2d 1006 (1982).

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2. Character, Ownership, or Use of Property

§ 278. Statutory requirement that use of property for charitable or other benevolent purpose be exclusive

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2309](#), [2340](#), [2341](#)

Most statutes require that the property must be used exclusively for a tax-exempt purpose in order to qualify for an exemption.¹ A clause exempting property "used exclusively for public charity" has been declared to refer not to the character of the association owning the property for which exemption was sought but to the nature of the use of the property.²

Under one line of authority, the statutory phrase "used exclusively" has been held to mean that the use made of the property sought to be exempted from taxation must be only, solely, and purely for the purposes stated and without participation in any other use.³ All uses of the property must be for the direct and primary exempt purpose.⁴ Property used occasionally for a nonexempt purpose is therefore not exempt.⁵ However, a use of true minor import, or a de minimus use, will not defeat the exemption.⁶ Moreover, property used for purposes directly incidental to and vitally necessary to the exempt use of the property is exempt.⁷

Under another line of authority, the exclusive use requirement is satisfied when the property is primarily used for the exempt purpose⁸ or where the dominant use is for the exempt purpose.⁹ Under this view, purposes and uses which are merely auxiliary or incidental to a main and tax-exempt purpose and use will not defeat the property tax exemption.¹⁰ According to another court, the property of a nonprofit tax-exempt entitled entity can be used for nonexempt purposes so long as the two purposes can be separately stated and accounted for and so long as the nonexempt use is never subject to the property tax exemption.¹¹

CUMULATIVE SUPPLEMENT

Cases:

To qualify as incidental use related to institutional necessity, under exception to general requirement under a tax-exemption statute that an organization occupy or use its property solely for its own tax-exempt purposes, the use must not be oriented toward pecuniary profit but, rather, toward providing necessary services and facilities. [Hebron Academy, Inc. v. Town of Hebron, 2013 ME 15, 60 A.3d 774 \(Me. 2013\)](#).

Hospital operated and used its property for profit-making purpose by entangling its activities with affiliated and non-affiliated for-profit entities, such that hospital did not qualify for property tax exemption for nonprofit organizations, since commingling of effort and activities with for-profit entities was significant and substantial benefit was conferred on for-profit entities as a result; hospital provided substantial subsidies to affiliated and unaffiliated for-profit entities in form of working capital loans, capital loans, and recruitments loans, hospital employees worked at affiliated for-profit entity, and hospital executives also served affiliated entities in executive capacities, making arm's-length transactions impossible. [N.J. Stat. Ann. § 54:4-3.6. AHS Hospital Corp. v. Town of Morristown, 28 N.J. Tax 456, 2015 WL 3956132 \(2015\)](#), as revised, (June 26, 2015) and as revised, (June 29, 2015) and as revised, (July 15, 2015).

Whether property is used exclusively for purposes of the charitable tax exemption is dependent upon whether the primary use of the property is in furtherance of permitted purposes. [McKinney's RPTL § 420-a\(1\)\(a\). Greater Jamaica Development Corporation v. New York City Tax Com'n, 25 N.Y.3d 614, 36 N.E.3d 645 \(2015\)](#).

Non-profit foundation's property was single unit, and property was used exclusively for tax exempt purposes, and thus foundation was entitled to property tax exemption, where foundation offered proof that undeveloped area was integral part of property, regardless of infrequency of use, because it served to preserve character of remaining property, including conference center, by providing security and tranquility benefits for conference center, and there was no evidence that foundation's exempt use of property was guise or pretense for use which primarily benefited only foundation. [McKinney's RPTL § 420-a\(1\)\(a, b\). Greentree Foundation v. Assessor and Bd. of Assessors of County of Nassau, 142 A.D.3d 665, 36 N.Y.S.3d 705 \(2d Dep't 2016\)](#).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Monroe v. Baptist Health Care Foundation, 772 So. 2d 414 \(Ala. 2000\)](#); [City of Nome v. Catholic Bishop of Northern Alaska, 707 P.2d 870 \(Alaska 1985\)](#); [St. Joseph's Living Center, Inc. v. Town of Windham, 290 Conn. 695, 966 A.2d 188 \(2009\)](#); [Partnership Housing Affordable to Society Everywhere, Inc. v. Decatur County Bd. of Tax Assessors, 312 Ga. App. 663, 719 S.E.2d 556 \(2011\)](#); [Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Ada County, 123 Idaho 410, 849 P.2d 83 \(1993\)](#); [Chicago Bar Ass'n v. Department of Revenue, 163 Ill. 2d 290, 206 Ill. Dec. 113, 644 N.E.2d 1166, 96 Ed. Law Rep. 1032 \(1994\)](#); [City of Lewiston v. Marcotte Congregate Housing, Inc., 673 A.2d 209 \(Me. 1996\)](#); [Supervisor of Assessments of Baltimore County v. Keeler, 362 Md. 198, 764 A.2d 821 \(2001\)](#); [Hattiesburg Area Senior Services, Inc. v. Lamar County, 633 So. 2d 440 \(Miss. 1994\)](#); [United Cerebral Palsy Ass'n of Greater Kansas City v. Ross, 789 S.W.2d 798 \(Mo. 1990\)](#); [Pittman v. Sarpy County Bd. of Equalization, 258 Neb. 390, 603 N.W.2d 447 \(1999\)](#); [Paper Mill Playhouse v. Millburn Tp., 95 N.J. 503, 472 A.2d 517, 42 A.L.R.4th 591 \(1984\)](#); [Hapletah v. Assessor of Town of Fallsburg, 79 N.Y.2d 244, 582 N.Y.S.2d 54, 590 N.E.2d 1182 \(1992\)](#); [True Christianity Evangelism v. Zaino, 91 Ohio St. 3d 117, 2001-Ohio-295, 742 N.E.2d 638 \(2001\)](#); [Alpha Gamma Zeta House Ass'n v. Clay County Bd. of Equalization, 1998 SD 101, 583 N.W.2d 167 \(S.D.](#)

- 1998); *Methodist Hospitals of Memphis v. Assessment Appeals Com'n*, 669 S.W.2d 305 (Tenn. 1984); *Corporation of Episcopal Church in Utah v. Utah State Tax Com'n*, 919 P.2d 556 (Utah 1996); *Manassas Lodge No. 1380, Loyal Order of Moose, Inc. v. Prince William County*, 218 Va. 220, 237 S.E.2d 102 (1977); *Deutsches Land, Inc. v. City of Glendale*, 225 Wis. 2d 70, 591 N.W.2d 583 (1999).
- 2 *Board of County Com'rs of Chaffee County v. Denver & R.G.R. Co. Employees' Relief Ass'n*, 70 Colo. 592, 203 P. 850, 22 A.L.R. 902 (1922); *St. Louis Lodge No. 9, B.P.O.E. v. Koeln*, 262 Mo. 444, 171 S.W. 329 (1914); *Young Men's Christian Ass'n of Columbia-Willamette v. Department of Revenue*, 308 Or. 644, 784 P.2d 1086 (1989); *Yorgason v. County Bd. of Equalization of Salt Lake County ex rel. Episcopal Management Corp.*, 714 P.2d 653 (Utah 1986); *Deutsches Land, Inc. v. City of Glendale*, 225 Wis. 2d 70, 591 N.W.2d 583 (1999).
- 3 *Monroe v. Baptist Health Care Foundation*, 772 So. 2d 414 (Ala. 2000); *In re University of Kansas School of Medicine-Wichita Medical Practice Ass'n from a Decision of Dist. Court of Shawnee County, Kansas*, 266 Kan. 737, 973 P.2d 176 (1999); *City of Lewiston v. Marcotte Congregate Housing, Inc.*, 673 A.2d 209 (Me. 1996).
- 4 *City of Nome v. Catholic Bishop of Northern Alaska*, 707 P.2d 870 (Alaska 1985).
- 5 *City of Nome v. Catholic Bishop of Northern Alaska*, 707 P.2d 870 (Alaska 1985).
The rental of 18% of a building to doctors made the charitable use of the building nonexclusive and therefore nonexempt. *City of Lewiston v. Marcotte Congregate Housing, Inc.*, 673 A.2d 209 (Me. 1996).
- 6 *City of Nome v. Catholic Bishop of Northern Alaska*, 707 P.2d 870 (Alaska 1985); *Corporation of Episcopal Church in Utah v. Utah State Tax Com'n*, 919 P.2d 556 (Utah 1996); *Deutsches Land, Inc. v. City of Glendale*, 225 Wis. 2d 70, 591 N.W.2d 583 (1999).
- 7 *City of Nome v. Catholic Bishop of Northern Alaska*, 707 P.2d 870 (Alaska 1985); *Connolly v. County of Orange*, 1 Cal. 4th 1105, 4 Cal. Rptr. 2d 857, 824 P.2d 663, 72 Ed. Law Rep. 1089 (1992), as modified, (Mar. 26, 1992); *Methodist Hospitals of Memphis v. Assessment Appeals Com'n*, 669 S.W.2d 305 (Tenn. 1984).
- 8 *Arkansas Conference Ass'n of Seventh Day Adventist, Inc. v. Benton County Bd. of Equalization*, 304 Ark. 95, 800 S.W.2d 426, 64 Ed. Law Rep. 1264 (1990); *Chicago Bar Ass'n v. Department of Revenue*, 163 Ill. 2d 290, 206 Ill. Dec. 113, 644 N.E.2d 1166, 96 Ed. Law Rep. 1032 (1994); *Central States Christian Endeavors Ass'n v. Nelson*, 898 S.W.2d 547 (Mo. 1995); *Pittman v. Sarpy County Bd. of Equalization*, 258 Neb. 390, 603 N.W.2d 447 (1999) (predominant use); *Hapletah v. Assessor of Town of Fallsburg*, 79 N.Y.2d 244, 582 N.Y.S.2d 54, 590 N.E.2d 1182 (1992).
- 9 *Manassas Lodge No. 1380, Loyal Order of Moose, Inc. v. Prince William County*, 218 Va. 220, 237 S.E.2d 102 (1977).
- 10 *Sephardic Congregation of South Monsey v. Town of Ramapo*, 47 A.D.3d 915, 849 N.Y.S.2d 662 (2d Dep't 2008).
- 11 *International Schools Services, Inc. v. West Windsor Tp.*, 207 N.J. 3, 21 A.3d 1166 (2011).

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71 Am. Jur. 2d State and Local Taxation § 279

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Four. Exemptions from Taxation

XV. Persons, Property, and Organizations Exempt from Taxation

D. Eleemosynary, Educational, Religious, and other Like Associations, Institutions, and Organizations

2. Character, Ownership, or Use of Property

§ 279. Exemption of part of property or part of its value

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2309](#), [2340](#), [2341](#)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 94](#) (Complaint, petition, or declaration—To recover payment of excessive taxes against partially exempt property of nonprofit corporation)

The general rule is that a statute which in effect exempts from taxation property or buildings used for certain purposes authorizes a partial exemption of a building in case the building is used in part for exempt purposes and in part for nonexempt purposes.¹ Similarly, it has been said that where a tract is used for two purposes, there is nothing novel in exempting the part used for an exempt purpose and subjecting the remainder to taxation.² However, some courts hold that where a constitution or statute exempts property used for certain purposes, it does not authorize an exemption of a part of a building and a taxation of the remainder so that where the building is used in part for exempt purposes and in part for nonexempt purposes, the entire building must be taxed.³

In a few jurisdictions, there is express statutory authority for the exemption of a part of a building and taxation of the remainder⁴ or for the exemption of the proportion of the property that the exempt use bears to the nonexempt use.⁵ When a property is

used for both exempt and nonexempt purposes, idle time, that is, time when the property is not being used, should be allocated between exempt and nonexempt use in the same proportion as actual use.⁶

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Footnotes

- 1 [Hanagan v. Rocky Ford Knights of Pythias Bldg. Ass'n](#), 101 Colo. 545, 75 P.2d 780 (1938); [Streeterville Corp. v. Department of Revenue of State of Ill.](#), 186 Ill. 2d 534, 239 Ill. Dec. 578, 714 N.E.2d 497 (1999); [Carroll Area Child Care Center, Inc. v. Carroll County Bd. of Review](#), 613 N.W.2d 252 (Iowa 2000); [City of Lewiston v. All Maine Fair Ass'n](#), 138 Me. 39, 21 A.2d 625 (1941); [Lynn Hospital v. Board of Assessors of Lynn](#), 383 Mass. 14, 417 N.E.2d 14 (1981); [Appeal of Emissaries of Divine Light](#), 140 N.H. 552, 669 A.2d 802 (1995); [Sisters of Charity of Cincinnati, Ohio v. Bernalillo County](#), 93 N.M. 42, 596 P.2d 255 (1979); [Olmsted Falls Bd. of Edn. v. Tracy](#), 77 Ohio St. 3d 393, 674 N.E.2d 690 (1997); [Young Men's Christian Ass'n of Columbia-Willamette v. Department of Revenue](#), 308 Or. 644, 784 P.2d 1086 (1989); [Loyal Order of Moose, No. 259 v. County Bd. of Equalization of Salt Lake County](#), 657 P.2d 257 (Utah 1982).
- 2 [Illinois Institute of Technology v. Skinner](#), 49 Ill. 2d 59, 273 N.E.2d 371, 54 A.L.R.3d 1 (1971); [Appeal of C.H.R.I.S.T., Inc.](#), 122 N.H. 982, 455 A.2d 1006 (1982); [Appeal of Forsyth County Tax Supervisor Regarding Certain Property Owned by Wake Forest University](#), 51 N.C. App. 516, 277 S.E.2d 91 (1981) (parking lots).
- 3 [State v. Bridges](#), 246 Ala. 486, 21 So. 2d 316, 159 A.L.R. 678 (1945); [City of Lewiston v. Marcotte Congregate Housing, Inc.](#), 673 A.2d 209 (Me. 1996).
- 4 [City of Nome v. Catholic Bishop of Northern Alaska](#), 707 P.2d 870 (Alaska 1985); [Brunswick School v. Town and Borough of Greenwich](#), 88 Conn. 241, 90 A. 801 (1914); [Boise Cent. Trades & Labor Council, Inc. v. Board of Ada County Com'rs](#), 122 Idaho 67, 831 P.2d 535 (1992); [Housing Partnership v. Town of Rollinsford](#), 141 N.H. 239, 683 A.2d 189 (1996); [Faith Fellowship Ministries, Inc. v. Limbach](#), 32 Ohio St. 3d 432, 513 N.E.2d 1340 (1987) (only if the division can be precisely delineated and is not the product of a calculation of percentage of use); [Loyal Order of Moose Lodge No. 1137 v. Pennington County](#), 1997 SD 80, 566 N.W.2d 132 (S.D. 1997); [Norwegian Lutheran Church of America v. Wooster](#), 176 Wash. 581, 30 P.2d 381 (1934).
- 5 [Diffenderfer v. Central Baptist Church of Miami, Fla., Inc.](#), 404 U.S. 412, 92 S. Ct. 574, 30 L. Ed. 2d 567 (1972) (construing Florida statute); [Lutherans Outdoors in South Dakota, Inc. v. South Dakota State Bd. of Equalization](#), 475 N.W.2d 140 (S.D. 1991); [Deutsches Land, Inc. v. City of Glendale](#), 225 Wis. 2d 70, 591 N.W.2d 583 (1999).
- 6 [Lutherans Outdoors in South Dakota, Inc. v. South Dakota State Bd. of Equalization](#), 475 N.W.2d 140 (S.D. 1991).

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71 Am. Jur. 2d State and Local Taxation § 280

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Four. Exemptions from Taxation

XV. Persons, Property, and Organizations Exempt from Taxation

D. Eleemosynary, Educational, Religious, and other Like Associations, Institutions, and Organizations

2. Character, Ownership, or Use of Property

§ 280. Prospective use

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2309](#), [2340](#), [2341](#)

A.L.R. Library

[Prospective use for tax-exempt purposes as entitling property to tax exemption, 54 A.L.R.3d 9](#)

When property is exempt from taxation only where used for designated purposes, the general rule is that a mere prospective use of property for such purposes does not exempt it from taxation.¹ In addition, generally, land procured for the purpose of erecting a church, but on which there is no house of religious worship, either finished or begun, is not exempt from taxation as a house of worship² although there is authority to the contrary.³ The seasonal use of property as a camp may qualify for exemption even though the property is unused for a period of each year where the intent is to use the property each season as a camp.⁴ Where property is used temporarily for business purposes, an intention ultimately to use it for the purposes of a religious and charitable institution is not the use contemplated by a statute exempting from taxation property used exclusively for religious and charitable purposes.⁵ A legacy to a charitable institution is not, while in the hands of the executor, exempt from taxation as property of a charitable institution.⁶

Footnotes

- 1 Hillman v. Flagstaff Community Hospital, 123 Ariz. 124, 598 P.2d 102 (1979); City and County of Denver v. George Washington Lodge Ass'n, 121 Colo. 470, 217 P.2d 617 (1950); Dade County Taxing Authorities v. Cedars of Lebanon Hospital Corp., Inc., 355 So. 2d 1202 (Fla. 1978); Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59, 273 N.E.2d 371, 54 A.L.R.3d 1 (1971); Ellsworth College of Iowa Falls v. Emmet County, 156 Iowa 52, 135 N.W. 594 (1912); Seventh Day Adventist Kansas Conference Ass'n v. Board of County Com'rs of Dickinson County, 211 Kan. 683, 508 P.2d 911 (1973); All Saints Parish v. Inhabitants of Town of Brookline, 178 Mass. 404, 59 N.E. 1003 (1901); Young Men's Christian Ass'n of Omaha v. Douglas County, 60 Neb. 642, 83 N.W. 924 (1900); Utah County By and Through County Bd. of Equalization of Utah County v. Intermountain Health Care, Inc., 725 P.2d 1357 (Utah 1986).
- 2 Enaut v. McGuire, 36 La. Ann. 804, 1884 WL 7900 (1884); All Saints Parish v. Inhabitants of Town of Brookline, 178 Mass. 404, 59 N.E. 1003 (1901); Trustees of Property of Protestant Episcopal Church in New Mexico v. State Tax Commission, 39 N.M. 419, 48 P.2d 786 (1935).
- 3 Monroe v. Baptist Health Care Foundation, 772 So. 2d 414 (Ala. 2000); In re Assessment of Property Belonging to Zion Evangelical Lutheran Church of Oklahoma City, 1949 OK 241, 202 Okla. 174, 211 P.2d 534 (1949).
- 4 Board of Assessors of Hamilton v. Iron Rail Fund of Girls Clubs of America, Inc., 367 Mass. 301, 325 N.E.2d 568 (1975).
- 5 Young Men's Christian Ass'n of Omaha v. Douglas County, 60 Neb. 642, 83 N.W. 924 (1900).
- 6 Commonwealth v. Williams' Ex'r, 102 Va. 778, 47 S.E. 867 (1904).

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71 Am. Jur. 2d State and Local Taxation § 281

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

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XV. Persons, Property, and Organizations Exempt from Taxation

D. Eleemosynary, Educational, Religious, and other Like Associations, Institutions, and Organizations

2. Character, Ownership, or Use of Property

§ 281. Exemption as affected by exaction of charges and fees

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2309](#), [2340](#), [2341](#)

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[Receipt of pay from beneficiaries as affecting tax exemption of charitable institutions, 37 A.L.R.3d 1191](#)

A charitable institution does not lose its character and consequent tax exemption merely because recipients of its benefits who are able to pay are required to do so where funds derived in this manner are devoted to the charitable purposes of the institution.¹ The exemption has been held to apply even if all or generally all the beneficiaries are required to pay, at least provided that the charges are nominal or below the actual cost of the benefits conferred,² but held not to apply, according to some cases, if they are remunerative in character³ and, in some instances, if they are set at usual, commercial, or substantial rates.⁴ To be charitable, the fee should be both incidental to and reasonably necessary for the accomplishment of the exempt activity and not exceed the operational requirements of the exempt activity.⁵ No charity is provided where the fee charged is designed to cover all the operating costs of the activity as well as recover some of the construction costs.⁶ However, even the realization of an operating income in excess of the cost of the services provided has been held not to destroy the tax-exempt status where the excess does not inure to anyone's individual profit but is devoted to the charitable purposes of the institution.⁷ Also, in fact, it has been said that to hold that because a charitable institution's receipts for a given period exceed its expenditures, this nullifies

the tax exemption would be to penalize efficiency and to cause the institution's eligibility for exemption to vary from year to year.⁸ Payment cannot be sought as the result of a dominant profit motive.⁹ However, it has been observed that where surplus revenue is utilized to improve the services of the charity, the exaction of fees is not motivated by private profit.¹⁰

The determining factor appears to be whether all are permitted to participate in the benefits of the organization regardless of ability to pay.¹¹ Where everyone must pay the same rate regardless of one's ability to pay, that is evidence that the organization is not operating as a charity.¹²

It has also been observed that when fee-for-service activities are involved, a charity can be established in one of two ways: (1) the fees charged to everyone are less than the cost to provide the service and the difference is made up through charitable contributions, or (2) the fees are market rate but are waived for needy recipients.¹³

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Footnotes

- 1 [Monroe v. Baptist Health Care Foundation](#), 772 So. 2d 414 (Ala. 2000); [City of Nome v. Catholic Bishop of Northern Alaska](#), 707 P.2d 870 (Alaska 1985); [Scripps Memorial Hospital v. California Employment Commission](#), 24 Cal. 2d 669, 151 P.2d 109, 155 A.L.R. 360 (1944); [Board of Assessment Appeals v. AM/FM Intern.](#), 940 P.2d 338 (Colo. 1997), as modified on denial of reh'g, (July 28, 1997); [Matter of Tax Appeal of Central Union Church—Arcadia Retirement Residence](#), 63 Haw. 199, 624 P.2d 1346 (1981); [Small v. Pangle](#), 60 Ill. 2d 510, 328 N.E.2d 285 (1975); [Carroll Area Child Care Center, Inc. v. Carroll County Bd. of Review](#), 613 N.W.2d 252 (Iowa 2000); [M. I. T. Student House, Inc. v. Board of Assessors of Boston](#), 350 Mass. 539, 215 N.E.2d 788 (1966); [Hattiesburg Area Senior Services, Inc. v. Lamar County](#), 633 So. 2d 440 (Miss. 1994); [Paper Mill Playhouse v. Millburn Tp.](#), 95 N.J. 503, 472 A.2d 517, 42 A.L.R.4th 591 (1984); [Riverview Place, Inc. v. Cass County By and Through Cass County Bd. of Com'rs](#), 448 N.W.2d 635 (N.D. 1989); [Foundation of Human Understanding v. Department of Revenue](#), 301 Or. 254, 722 P.2d 1 (1986); [Wayne County Bd. of Assessment v. Federation of Jewish Philanthropies](#), 43 Pa. Commw. 508, 403 A.2d 613 (1979); [City of McAllen v. Evangelical Lutheran Good Samaritan Society](#), 530 S.W.2d 806 (Tex. 1975); [Yorgason v. County Bd. of Equalization of Salt Lake County ex rel. Episcopal Management Corp.](#), 714 P.2d 653 (Utah 1986); [Medical Center Hosp. of Vermont, Inc. v. City of Burlington](#), 152 Vt. 611, 566 A.2d 1352 (1989); [Smyth County Community Hosp. v. Town of Marion](#), 259 Va. 328, 527 S.E.2d 401 (2000); [Milwaukee Protestant Home for the Aged v. City of Milwaukee](#), 41 Wis. 2d 284, 164 N.W.2d 289 (1969).
- 2 [Monroe v. Baptist Health Care Foundation](#), 772 So. 2d 414 (Ala. 2000); [Fredericka Home for the Aged v. San Diego County](#), 35 Cal. 2d 789, 221 P.2d 68 (1950); [Appeal of Sunny Ridge Manor, Inc.](#), 106 Idaho 98, 675 P.2d 813 (1984); [Maine AFL-CIO Housing Development Corp. v. Town of Madawaska](#), 523 A.2d 581 (Me. 1987); [Cummington School of Arts, Inc. v. Board of Assessors of Cummington](#), 373 Mass. 597, 369 N.E.2d 457 (1977); [Bader Realty & Inv. Co. v. St. Louis Housing Authority](#), 358 Mo. 747, 217 S.W.2d 489 (1949); [Bowers v. Akron City Hospital](#), 16 Ohio St. 2d 94, 45 Ohio Op. 2d 445, 243 N.E.2d 95, 33 A.L.R.3d 934 (1968); [Baptist Health Care Corp. v. Okmulgee County Bd. of Equalization](#), 1988 OK 11, 750 P.2d 127 (Okla. 1988); [Unionville-Chadds Ford School Dist. v. Chester County Bd. of Assessment Appeals](#), 552 Pa. 212, 714 A.2d 397 (1998); [Wayne County Bd. of Assessment v. Rolling Hills Girl Scout Council](#), 19 Pa. Commw. 484, 353 A.2d 498 (1975); [Yorgason v. County Bd. of Equalization of Salt Lake County ex rel. Episcopal Management Corp.](#), 714 P.2d 653 (Utah 1986).
- 3 [West Brandt Foundation, Inc. v. Carper](#), 652 P.2d 564 (Colo. 1982); [Presbyterian Homes of Synod of Fla., Inc. v. City of Bradenton](#), 190 So. 2d 771 (Fla. 1966); [United Hospitals Service Ass'n v. Fulton County](#), 216 Ga. 30, 114 S.E.2d 524 (1960); [Willows v. Munson](#), 43 Ill. 2d 203, 251 N.E.2d 249 (1969); [Douglas County v. OEA Senior Citizens, Inc.](#), 172 Neb. 696, 111 N.W.2d 719 (1961); [Mountain View Homes, Inc. v. State Tax Commission](#), 77 N.M. 649, 427 P.2d 13 (1967).
- 4 [Monroe v. Baptist Health Care Foundation](#), 772 So. 2d 414 (Ala. 2000); [West Brandt Foundation, Inc. v. Carper](#), 652 P.2d 564 (Colo. 1982); [People ex rel. Nordlund v. Association of Winnebago Home for Aged](#),

- 40 Ill. 2d 91, 237 N.E.2d 533 (1968); American Ass'n of Cereal Chemists v. County of Dakota, 454 N.W.2d 912 (Minn. 1990); Better Living Services, Inc. v. Bolivar County, 587 So. 2d 914 (Miss. 1991); Housing Partnership v. Town of Rollinsford, 141 N.H. 239, 683 A.2d 189 (1996) (rental of "low income housing" at close to market rates); Presbyterian Homes of Synod of N. J. v. Division of Tax Appeals, 55 N.J. 275, 261 A.2d 143, 37 A.L.R.3d 1181 (1970); People ex rel. Provident Loan Soc. of New York v. Chambers, 301 N.Y. 575, 93 N.E.2d 455 (1950).
- 5 City of Nome v. Catholic Bishop of Northern Alaska, 707 P.2d 870 (Alaska 1985).
- 6 Retirement Homes of Detroit Annual Conference of United Methodist Church, Inc. v. Sylvan Tp., Washtenaw County, 416 Mich. 340, 330 N.W.2d 682 (1982).
- 7 Monroe v. Baptist Health Care Foundation, 772 So. 2d 414 (Ala. 2000); Board of Assessment Appeals v. AM/FM Intern., 940 P.2d 338 (Colo. 1997), as modified on denial of reh'g, (July 28, 1997); Matter of Tax Appeal of Central Union Church—Arcadia Retirement Residence, 63 Haw. 199, 624 P.2d 1346 (1981); Paper Mill Playhouse v. Millburn Tp., 95 N.J. 503, 472 A.2d 517, 42 A.L.R.4th 591 (1984); Wilson Area School Dist. v. Easton Hosp., 561 Pa. 1, 747 A.2d 877 (2000); City of McAllen v. Evangelical Lutheran Good Samaritan Society, 530 S.W.2d 806 (Tex. 1975); American Museum of Fly Fishing, Inc. v. Town of Manchester, 151 Vt. 103, 557 A.2d 900 (1989); Smyth County Community Hosp. v. Town of Marion, 259 Va. 328, 527 S.E.2d 401 (2000); Milwaukee Protestant Home for the Aged v. City of Milwaukee, 41 Wis. 2d 284, 164 N.W.2d 289 (1969).
- 8 Monroe v. Baptist Health Care Foundation, 772 So. 2d 414 (Ala. 2000); Appeal of Vanguard School, 430 Pa. 378, 243 A.2d 323 (1968).
- 9 City of Nome v. Catholic Bishop of Northern Alaska, 707 P.2d 870 (Alaska 1985); Matter of Tax Appeal of Central Union Church—Arcadia Retirement Residence, 63 Haw. 199, 624 P.2d 1346 (1981).
- 10 Wilson Area School Dist. v. Easton Hosp., 561 Pa. 1, 747 A.2d 877 (2000).
- 11 Clark v. Marian Park, Inc., 80 Ill. App. 3d 1010, 36 Ill. Dec. 241, 400 N.E.2d 661 (2d Dist. 1980); Iowa Methodist Hospital v. Board of Review of City of Des Moines, 252 N.W.2d 390 (Iowa 1977); Michigan Baptist Homes & Development Co. v. City of Ann Arbor, 396 Mich. 660, 242 N.W.2d 749 (1976); Smyth County Community Hosp. v. Town of Marion, 259 Va. 328, 527 S.E.2d 401 (2000).
- 12 Board of Assessment Appeals v. AM/FM Intern., 940 P.2d 338 (Colo. 1997), as modified on denial of reh'g, (July 28, 1997); Clark v. Marian Park, Inc., 80 Ill. App. 3d 1010, 36 Ill. Dec. 241, 400 N.E.2d 661 (2d Dist. 1980); Partnership for Affordable Housing, Ltd. Partnership Gamma v. Board of Review for City of Davenport, 550 N.W.2d 161 (Iowa 1996); Iowa Methodist Hospital v. Board of Review of City of Des Moines, 252 N.W.2d 390 (Iowa 1977); Hattiesburg Area Senior Services, Inc. v. Lamar County, 633 So. 2d 440 (Miss. 1994); Appeal of Chapel Hill Residential Retirement Center, Inc., 60 N.C. App. 294, 299 S.E.2d 782 (1983).
- 13 Carroll Area Child Care Center, Inc. v. Carroll County Bd. of Review, 613 N.W.2d 252 (Iowa 2000).

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71 Am. Jur. 2d State and Local Taxation § 282

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Four. Exemptions from Taxation

XV. Persons, Property, and Organizations Exempt from Taxation

D. Eleemosynary, Educational, Religious, and other Like Associations, Institutions, and Organizations

2. Character, Ownership, or Use of Property

§ 282. Income-producing property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2309](#), [2340](#), [2342](#), [2350](#)

A.L.R. Library

[Comment Note: Availability of tax exemption to property held on lease from exempt owner, 54 A.L.R.3d 402](#)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 95](#) (Complaint, petition, or declaration—By lessor—To recover tax payment on property leased for charitable purposes)

Although there is authority to the contrary,¹ generally, a charitable institution is not entitled to an exemption from taxation on real property which it leases out or holds for revenue although the funds derived in this manner are devoted to charitable purposes.² However, property leased or rented by a charitable institution may remain exempt if:

- the property is leased or rented for an exempt activity³
- the lease or rental payment are not the product of an owner's dominant profit motive; in other words, the property is leased at a charitable rate⁴
- the for-profit commercial activities on the property are in furtherance of the property's tax-exempt purposes⁵
- the lease or rental payment are incidental to and reasonably necessary for the exempt use of the property and do not exceed the operational requirements of the exempt use⁶

Thus, the mere existence of a lease will not work a forfeiture of exempt status unless the lease generates a substantial net revenue.⁷ Also, it has been held that a nonprofit charitable entity can take in surplus revenue without losing its tax-exempt status as a charity provided that it uses those funds in a manner not inconsistent with its charitable purpose.⁸

The fact that the institution derives revenue from the use of its buildings does not necessarily render them taxable if the use itself is for the purposes for which the institution was established.⁹ However, in determining what is meant by charitable purposes, within the meaning of a tax exemption provision, the fact that the activities of the organization are not conducted for profit has been held not to be controlling.¹⁰

The cases are not harmonious with respect to the exemption of income-producing personal property belonging to charitable institutions. One rule, as in the case of income-producing real property, seems to be that such property is subject to taxation even though the income is used for charitable purposes.¹¹ Some authorities, however, uphold the position that such property is exempt where the income is used for charitable purposes.¹²

One court has held that an economic benefit to a charitable organization does not by itself extinguish the property tax exemption for property used for charitable purposes; the question is how the property is used, not whether it is profitable.¹³

CUMULATIVE SUPPLEMENT

Cases:

Property owned by an tax-exempt entity and leased to others for profit cannot be exempt. [Living Word Bible Camp v. County of Itasca](#), 829 N.W.2d 404 (Minn. 2013).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Banahan v. Presbyterian Housing Corp.](#), 553 S.W.2d 48 (Ky. 1977); [City of New Orleans v. Russ](#), 27 La. Ann. 413, 1875 WL 7315 (1875).
- 2 [Most Worshipful Grand Lodge of Free and Accepted Masons of State of Ala. v. Norred](#), 603 So. 2d 996 (Ala. 1992); [Wolfe v. State](#), 553 P.2d 472 (Alaska 1976); [Young Men's Christian Ass'n of Los Angeles v. Los Angeles County](#), 35 Cal. 2d 760, 221 P.2d 47 (1950); [Boise Cent. Trades & Labor Council, Inc. v. Board of Ada County Com'rs](#), 122 Idaho 67, 831 P.2d 535 (1992); [People ex rel. Baldwin v. Jessamine Withers Home](#),

312 Ill. 136, 143 N.E. 414, 34 A.L.R. 628 (1924); *Evangelical Lutheran Synod of Mo., Ohio and Other States v. Hoehn*, 355 Mo. 257, 196 S.W.2d 134 (1946); *In re Young Men's Christian Ass'n Assessment*, 106 Neb. 105, 182 N.W. 593, 34 A.L.R. 1060 (1921); *Case W. Res. Univ. v. Tracy*, 84 Ohio St. 3d 316, 1999-Ohio-355, 703 N.E.2d 1240, 131 Ed. Law Rep. 491 (1999); *Wellsburg Unity Apartments, Inc. v. County Com'n of Brooke County*, 202 W. Va. 283, 503 S.E.2d 851 (1998); *Deutsches Land, Inc. v. City of Glendale*, 225 Wis. 2d 70, 591 N.W.2d 583 (1999).

3 *City of Nome v. Catholic Bishop of Northern Alaska*, 707 P.2d 870 (Alaska 1985); *Christ the Good Shepherd Lutheran Church v. Mathiesen*, 81 Cal. App. 3d 355, 146 Cal. Rptr. 321 (1st Dist. 1978); *In re University of Kansas School of Medicine-Wichita Medical Practice Ass'n from a Decision of Dist. Court of Shawnee County, Kansas*, 266 Kan. 737, 973 P.2d 176 (1999); *United Cerebral Palsy Ass'n of Greater Kansas City v. Ross*, 789 S.W.2d 798 (Mo. 1990); *United Way of the Midlands v. Douglas County Bd. of Equalization*, 215 Neb. 1, 337 N.W.2d 103 (1983) (disapproved of on other grounds by, *Fort Calhoun Baptist Church v. Washington County Bd. of Equalization*, 277 Neb. 25, 759 N.W.2d 475 (2009)); *Symphony Space, Inc. v. Tishelman*, 60 N.Y.2d 33, 466 N.Y.S.2d 677, 453 N.E.2d 1094 (1983); *Mercy Health Promotion, Inc. v. Department of Revenue*, 310 Or. 123, 795 P.2d 1082 (1990); *Mariner's Museum v. City of Newport News*, 255 Va. 40, 495 S.E.2d 251 (1998); *Deutsches Land, Inc. v. City of Glendale*, 225 Wis. 2d 70, 591 N.W.2d 583 (1999).

4 *City of Nome v. Catholic Bishop of Northern Alaska*, 707 P.2d 870 (Alaska 1985); *Christ the Good Shepherd Lutheran Church v. Mathiesen*, 81 Cal. App. 3d 355, 146 Cal. Rptr. 321 (1st Dist. 1978); *In re University of Kansas School of Medicine-Wichita Medical Practice Ass'n from a Decision of Dist. Court of Shawnee County, Kansas*, 266 Kan. 737, 973 P.2d 176 (1999); *United Cerebral Palsy Ass'n of Greater Kansas City v. Ross*, 789 S.W.2d 798 (Mo. 1990); *Symphony Space, Inc. v. Tishelman*, 60 N.Y.2d 33, 466 N.Y.S.2d 677, 453 N.E.2d 1094 (1983); *Mercy Health Promotion, Inc. v. Department of Revenue*, 310 Or. 123, 795 P.2d 1082 (1990); *Mariner's Museum v. City of Newport News*, 255 Va. 40, 495 S.E.2d 251 (1998).

Apartment complexes primarily rented to low-income tenants and physically or mentally disabled persons were not devoted to charitable purposes as required for charitable property tax exemptions, even if the owners of the complexes were charitable organizations, where the owners received fair market prices for their rental properties through governmental subsidies and sold the property at its fair market value; the owners competed with for-profit property owners in the area; the owners did not provide any additional services to renters or home buyers, but only allowed others to provide additional services at no cost; and the owners would evict tenants unable to meet their rent obligations. *Grand Forks Homes, Inc. v. Grand Forks Bd. of County Com'rs*, 2011 ND 50, 795 N.W.2d 381 (N.D. 2011).

5 *Congregation Rabbinical College of Tartikoff, Inc. v. Town of Ramapo*, 72 A.D.3d 869, 900 N.Y.S.2d 103 (2d Dep't 2010), leave to appeal granted, 15 N.Y.3d 704, 907 N.Y.S.2d 752, 934 N.E.2d 321 (2010) and order aff'd, 17 N.Y.3d 763, 929 N.Y.S.2d 32, 952 N.E.2d 1024 (2011).

6 *City of Nome v. Catholic Bishop of Northern Alaska*, 707 P.2d 870 (Alaska 1985); *In re University of Kansas School of Medicine-Wichita Medical Practice Ass'n from a Decision of Dist. Court of Shawnee County, Kansas*, 266 Kan. 737, 973 P.2d 176 (1999); *United Way of the Midlands v. Douglas County Bd. of Equalization*, 215 Neb. 1, 337 N.W.2d 103 (1983) (disapproved of on other grounds by, *Fort Calhoun Baptist Church v. Washington County Bd. of Equalization*, 277 Neb. 25, 759 N.W.2d 475 (2009)); *Symphony Space, Inc. v. Tishelman*, 60 N.Y.2d 33, 466 N.Y.S.2d 677, 453 N.E.2d 1094 (1983); *Mercy Health Promotion, Inc. v. Department of Revenue*, 310 Or. 123, 795 P.2d 1082 (1990); *Mariner's Museum v. City of Newport News*, 255 Va. 40, 495 S.E.2d 251 (1998); *Deutsches Land, Inc. v. City of Glendale*, 225 Wis. 2d 70, 591 N.W.2d 583 (1999).

7 *Mariner's Museum v. City of Newport News*, 255 Va. 40, 495 S.E.2d 251 (1998).

8 *St. Joseph's Living Center, Inc. v. Town of Windham*, 290 Conn. 695, 966 A.2d 188 (2009).

9 *Boise Cent. Trades & Labor Council, Inc. v. Board of Ada County Com'rs*, 122 Idaho 67, 831 P.2d 535 (1992); *Commonwealth v. Lynchburg Y.M.C.A.*, 115 Va. 745, 80 S.E. 589 (1913).

10 *International College of Surgeons v. Brenza*, 8 Ill. 2d 141, 133 N.E.2d 269, 61 A.L.R.2d 1027 (1956).

11 *People ex rel. Baldwin v. Jessamine Withers Home*, 312 Ill. 136, 143 N.E. 414, 34 A.L.R. 628 (1924); *Murphy v. Concordia Pub. House*, 348 Mo. 753, 155 S.W.2d 122, 136 A.L.R. 1461 (1941); *Steer, Inc. v. Department of Revenue of State of Montana*, 245 Mont. 470, 803 P.2d 601 (1990); *American Sunday-School*

- Union v. Taylor, 161 Pa. 307, 29 A. 26 (1894); Mariner's Museum v. City of Newport News, 255 Va. 40, 495 S.E.2d 251 (1998).
- 12 New Castle County v. Historical Soc. of Delaware, 580 A.2d 578 (Del. 1990); Trustees of Kentucky Female Orphan School v. City of Louisville, 100 Ky. 470, 19 Ky. L. Rptr. 1091, 19 Ky. L. Rptr. 1916, 36 S.W. 921 (1896); Assessors of Boston v. Lamson, 316 Mass. 166, 55 N.E.2d 215, 154 A.L.R. 886 (1944); Book Agents of Methodist Episcopal Church, South v. Hinton, 92 Tenn. 188, 21 S.W. 321 (1893).
- 13 Adult Home at Erie Station, Inc. v. Assessor, 10 N.Y.3d 205, 856 N.Y.S.2d 515, 886 N.E.2d 137 (2008).

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71 Am. Jur. 2d State and Local Taxation § 283

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State and Local Taxation

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Part Four. Exemptions from Taxation

XV. Persons, Property, and Organizations Exempt from Taxation

D. Eleemosynary, Educational, Religious, and other Like Associations, Institutions, and Organizations

2. Character, Ownership, or Use of Property

§ 283. Limiting benefits to particular class

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2309](#), [2340](#), [2341](#)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 101](#) (Complaint, petition, or declaration—Allegation—Charitable benefits not limited to particular class)

Whether an organization is to be regarded as a charitable institution within the meaning of tax exemption statutes is often affected by the fact that its benefits are restricted to a particular class.¹ Generally, where the statute exempts institutions of purely public charity, an organization limiting its benefits to a restricted class is not exempt.² Thus, where the benefits of an organization are limited to paying members, it is not a purely public charity.³ If the dominant purpose of an organization's work is to benefit its members or a limited class of people, it is not a charitable organization.⁴ However, even though the benefit is limited to a specific group of people, when the facility provides a service to individuals which might normally require government funds, it provides a service to the general public by relieving a potential obligation of government.⁵ A different rule ordinarily prevails, however, when the property, rather than its owners, is exempted from taxation if devoted to charitable purposes.⁶ Property need not be open to the general public as long as it promotes a charitable purpose.⁷

The fact that a school sets academic standards does not deprive it of charitable status as long as anyone who meets the standards can attend the school.⁸

CUMULATIVE SUPPLEMENT

Cases:

An organization's legal status as a charitable corporation or its exemption from Federal taxation under the United States tax code is not sufficient to show that the organization is a charitable organization, as required to qualify for a charitable property tax exemption; an organization must prove that it is in fact so conducted that in actual operation it is a public charity. 26 U.S.C.A. § 501(c)(3); M.G.L.A. c. 59, § 5. *New England Forestry Foundation, Inc. v. Board of Assessors of Hawley*, 468 Mass. 138, 9 N.E.3d 310 (2014).

Nonprofit corporation that owned property could not establish its tax-exempt charitable status by relying on the activities of its nonprofit tenant, which was also the sole member of a foundation that was the sole member of the nonprofit corporation; despite allegation that corporation was organized for the sole purpose of holding title to property and collecting rental income, corporation was itself a separate legal entity and could not rely on vicarious exemption to establish its charitable status. *Ohio Rev. Code Ann. § 5709.121. Chagrin Realty, Inc. v. Testa*, 154 Ohio St. 3d 352, 2018-Ohio-4751, 114 N.E.3d 204 (2018).

[END OF SUPPLEMENT]

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Footnotes

- 1 *Missouri Pac. Hospital Ass'n v. Pulaski County*, 211 Ark. 9, 199 S.W.2d 329 (1947); *Housing Southwest, Inc. v. Washington County*, 128 Idaho 335, 913 P.2d 68 (1996); *A. T. & S. F. Hospital Ass'n v. State Commission of Revenue and Taxation*, 173 Kan. 312, 246 P.2d 299 (1952); *Evangelical Retirement Homes of Greater St. Louis, Inc. v. State Tax Com'n of Missouri*, 669 S.W.2d 548 (Mo. 1984); *Housing Partnership v. Town of Rollinsford*, 141 N.H. 239, 683 A.2d 189 (1996); *Howell v. County Bd. of Cache County ex rel. IHC Hospitals, Inc.*, 881 P.2d 880 (Utah 1994).
- 2 *Missouri Pac. Hospital Ass'n v. Pulaski County*, 211 Ark. 9, 199 S.W.2d 329 (1947); *A. T. & S. F. Hospital Ass'n v. State Commission of Revenue and Taxation*, 173 Kan. 312, 246 P.2d 299 (1952); *Commonwealth v. Thomas*, 119 Ky. 208, 26 Ky. L. Rptr. 1128, 83 S.W. 572 (1904); *Housing Partnership v. Town of Rollinsford*, 141 N.H. 239, 683 A.2d 189 (1996); *Kingsland Bay School, Inc. v. Town of Middlebury*, 153 Vt. 201, 569 A.2d 496, 58 Ed. Law Rep. 694 (1989).
- 3 *American Ass'n of Cereal Chemists v. County of Dakota*, 454 N.W.2d 912 (Minn. 1990); *Olmsted Falls Bd. of Edn. v. Tracy*, 77 Ohio St. 3d 393, 674 N.E.2d 690 (1997); *Loyal Order of Moose Lodge No. 1137 v. Pennington County*, 1997 SD 80, 566 N.W.2d 132 (S.D. 1997); *North Alamo Water Supply Corp. v. Willacy County Appraisal Dist.*, 804 S.W.2d 894 (Tex. 1991).
As to limiting benefits to those with the ability to pay, see § 281.
- 4 *Alcoser v. County of San Diego*, 111 Cal. App. 3d 907, 169 Cal. Rptr. 91 (4th Dist. 1980); *New England Legal Foundation v. City of Boston*, 423 Mass. 602, 670 N.E.2d 152 (1996); *Nebraska State Bar Foundation v. Lancaster County Bd. of Equalization*, 237 Neb. 1, 465 N.W.2d 111 (1991); *Appeal of Chapel Hill Residential Retirement Center, Inc.*, 60 N.C. App. 294, 299 S.E.2d 782 (1983).
- 5 *Appeal of Sunny Ridge Manor, Inc.*, 106 Idaho 98, 675 P.2d 813 (1984).
- 6 *Horton v. Colorado Springs Masonic Bldg. Soc.*, 64 Colo. 529, 173 P. 61 (1918); *People ex rel. Carr v. Alpha Pi of Phi Kappa Sigma Educational Ass'n of University of Chicago*, 326 Ill. 573, 158 N.E. 213, 54 A.L.R. 1376 (1927); *Portland Hibernian Benev. Soc. v. Kelly*, 28 Or. 173, 42 P. 3 (1895).

7 [Herb Soc. of Am., Inc. v. Tracy](#), 71 Ohio St. 3d 374, 643 N.E.2d 1132 (1994).
8 [City of Washington v. Board of Assessment Appeals of Washington County](#), 550 Pa. 175, 704 A.2d 120,
 123 Ed. Law Rep. 245 (1997).

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71 Am. Jur. 2d State and Local Taxation § 284

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State and Local Taxation

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Part Four. Exemptions from Taxation

XV. Persons, Property, and Organizations Exempt from Taxation

D. Eleemosynary, Educational, Religious, and other Like Associations, Institutions, and Organizations

2. Character, Ownership, or Use of Property

§ 284. Use for recreation and social activities

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2309](#), [2340](#), [2341](#)

A.L.R. Library

[Exemption of public golf courses from local property taxes](#), 41 A.L.R.4th 963

A charitable institution is entitled to an exemption from taxation on property owned by it and used exclusively as a place of recreation for the recipients of its benefits.¹

Caution:

In at least one state, the predominate rule is to deny a property tax exemption for property used primarily for social or recreational purposes even if that property is owned by a fraternal organization.²

Further, most constitutional and statutory provisions extending tax exemptions in favor of property used for educational purposes are construed to extend to property used by an educational institution for the social or recreational purposes of its students and faculty from which it derives no profit.³ Such tax exemption provisions are construed to include property occupied and used by the institution and its students as a playground or as a field for athletic sports, such as baseball, football, and other outdoor sports and activities,⁴ provided that such property is not used for purposes of private or corporate income.⁵ In some jurisdictions, before property used for recreational purposes may qualify for an exemption, the town must vote to grant the exemption.⁶

It has been held in some cases that a building occupied by a charitable institution as its headquarters is not exempt from taxation if the building itself is commonly used for social enjoyment by the members of the institution.⁷ Thus, a building of an organization with charitable objectives, which building is primarily used for a club, or for social or fraternal purposes, or for lodge meetings for the conduct of ritualistic work, is not exempt from taxation.⁸

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Footnotes

- 1 [Stoughton v. Town and City of Hartford](#), 85 Conn. 674, 84 A. 95 (1912); [Coeur d'Alene Public Golf Club, Inc. v. Kootenai Bd. of Equalization](#), 106 Idaho 104, 675 P.2d 819, 41 A.L.R.4th 955 (1984); [Flathead Lake Methodist Camp v. Webb](#), 144 Mont. 565, 399 P.2d 90 (1965); [Application of Young Men's Philanthropic League](#), 80 A.D.2d 775, 436 N.Y.S.2d 709 (1st Dep't 1981); [Highland Park Owners, Inc. v. Tracy](#), 71 Ohio St. 3d 405, 1994-Ohio-32, 644 N.E.2d 284 (1994).
- 2 [Sherwood Forest Country Club v. Litchfield](#), 998 So. 2d 56 (La. 2008), on reh'g in part, 6 So. 3d 141 (La. 2009).
- 3 [Board of Trustees v. County of Santa Clara](#), 86 Cal. App. 3d 79, 150 Cal. Rptr. 109 (1st Dist. 1978); [Yale University v. Town of New Haven](#), 71 Conn. 316, 42 A. 87 (1899); [Elder v. Trustees of Atlanta University](#), 194 Ga. 716, 22 S.E.2d 515, 143 A.L.R. 268 (1942); [People ex rel. Goodman v. University of Illinois Foundation](#), 388 Ill. 363, 58 N.E.2d 33, 157 A.L.R. 851 (1944); [Cummington School of Arts, Inc. v. Board of Assessors of Cummington](#), 373 Mass. 597, 369 N.E.2d 457 (1977).
- 4 [Board of Trustees v. County of Santa Clara](#), 86 Cal. App. 3d 79, 150 Cal. Rptr. 109 (1st Dist. 1978) (golf course); [Elder v. Trustees of Atlanta University](#), 194 Ga. 716, 22 S.E.2d 515, 143 A.L.R. 268 (1942).
- 5 [Elder v. Trustees of Atlanta University](#), 194 Ga. 716, 22 S.E.2d 515, 143 A.L.R. 268 (1942).
- 6 [President and Fellows of Middlebury College v. Town of Hancock](#), 147 Vt. 259, 514 A.2d 1061, 35 Ed. Law Rep. 202 (1986).
- 7 [St. Louis Lodge No. 9, B.P.O.E. v. Koeln](#), 262 Mo. 444, 171 S.W. 329 (1914); [Olmsted Falls Bd. of Edn. v. Tracy](#), 77 Ohio St. 3d 393, 674 N.E.2d 690 (1997); [Loyal Order of Moose Lodge No. 1137 v. Pennington County](#), 1997 SD 80, 566 N.W.2d 132 (S.D. 1997); [Loyal Order of Moose, No. 259 v. County Bd. of Equalization of Salt Lake County](#), 657 P.2d 257 (Utah 1982) (a more-than-de-minimis use for social enjoyment, not necessarily the primary use, will render the property nonexempt); [Trustees of Green Bay Lodge, No. 259, B.P.O.E. of America v. City of Green Bay](#), 122 Wis. 452, 100 N.W. 837 (1904).
- 8 [People ex rel. Nelson v. Rockford Masonic Temple Bldg. Ass'n](#), 348 Ill. 567, 181 N.E. 428, 83 A.L.R. 768 (1932); [Woman's Club of Topeka v. Shawnee County](#), 253 Kan. 175, 853 P.2d 1157 (1993); [Loyal Order of Moose Lodge No. 1137 v. Pennington County](#), 1997 SD 80, 566 N.W.2d 132 (S.D. 1997); [North Gates Elks Club v. Garner](#), 496 S.W.2d 887 (Tenn. 1973).

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71 Am. Jur. 2d State and Local Taxation § 285

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State and Local Taxation

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Part Four. Exemptions from Taxation

XV. Persons, Property, and Organizations Exempt from Taxation

D. Eleemosynary, Educational, Religious, and other Like Associations, Institutions, and Organizations

2. Character, Ownership, or Use of Property

§ 285. Parking facilities

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2309](#), [2340](#), [2341](#)

A.L.R. Library

[Receipt of pay from beneficiaries as affecting tax exemption of charitable institutions, 37 A.L.R.3d 1191](#)

[Garage or parking lot as within tax exemption extended to property of educational, charitable, or hospital organizations, 33 A.L.R.3d 938](#)

The question whether a particular garage or parking facility owned and used by a charitable institution is tax-exempt has been decided on a case-by-case basis, with inquiries being made into the applicable statute, the particular institution which owned and used the facility, and the facts surrounding the use of the facility. While the precise language of the statutes varies, the cases hold, in effect, that for a particular garage or parking facility to be exempt, whether it is one utilized by an educational institution,¹ a hospital,² or any other charitable institution,³ it must be reasonably necessary to the existence of the institution itself.⁴ Often to qualify, the parking must be limited to staff, personnel, and visitors or guests of the institution, to the exclusion of the general public.⁵ Thus, a hospital parking garage used primarily by hospital employees and visitors but also used by the general public is exempt only to the portion used by employees and visitors.⁶ The fact that the institution in question has taken steps toward excluding the general public from the facilities, as by placing a sign at the entrance which limits admittance to the

staff or visitors of the institution,⁷ or by charging fees to gain entrance,⁸ has been considered by some courts which allowed the exemption as indicating that the facilities were used and reasonably required for the purposes for which the institution was organized. In this regard, lots physically removed from the main buildings of the institution, and used by the general public rather than by persons connected with the institution, were not entitled to an exemption.⁹ The courts seem to be particularly inclined to allow the exemption where a peculiar need for parking facilities is shown, such as where the institution in question is located in a congested urban area where other parking facilities are inadequate.¹⁰

The fact that fees are charged for use of the facilities has been held to not bar the exemption even where an operating surplus was realized.¹¹ The courts so holding take care to point out, however, that the purposes of such fees were not to earn profits for the institution¹² but were to provide funds to operate the facilities in question¹³ and possibly to construct new facilities, or to regulate the use of the facilities, as by denying use thereof to all except those with such an interest in the institution as to be willing to pay a fee to enter.¹⁴

Under a state statute which provides that church property is exempt from taxation only if the property is used predominantly for religious purposes and only to the extent of the ratio that such predominant use bears a nonexempt use, an off-street parking lot owned by a church, which lot is used by numerous persons pursuing a variety of church activities and which is also used as a commercial parking lot every day except Sunday, is not fully exempt from taxation.¹⁵

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Footnotes

- 1 [District of Columbia v. George Washington University](#), 221 F.2d 87 (D.C. Cir. 1955); [Church Divinity School of Pacific v. Alameda County](#), 152 Cal. App. 2d 496, 314 P.2d 209 (1st Dist. 1957); [St. Paul's School v. City of Concord](#), 117 N.H. 243, 372 A.2d 269 (1977); [Case W. Res. Univ. v. Tracy](#), 84 Ohio St. 3d 316, 1999-Ohio-355, 703 N.E.2d 1240, 131 Ed. Law Rep. 491 (1999).
- 2 [Streeterville Corp. v. Department of Revenue of State of Ill.](#), 186 Ill. 2d 534, 239 Ill. Dec. 578, 714 N.E.2d 497 (1999); [Hotel Dieu v. Williams](#), 410 So. 2d 1111 (La. 1982); [Lynn Hospital v. Board of Assessors of Lynn](#), 383 Mass. 14, 417 N.E.2d 14 (1981); [Ellis Hospital v. Fredette](#), 27 A.D.2d 390, 279 N.Y.S.2d 925 (3d Dep't 1967); [Bowers v. Akron City Hospital](#), 16 Ohio St. 2d 94, 45 Ohio Op. 2d 445, 243 N.E.2d 95, 33 A.L.R.3d 934 (1968); [Medical Center Hosp. of Vermont, Inc. v. City of Burlington](#), 152 Vt. 611, 566 A.2d 1352 (1989).
- 3 [Mark H. Wentworth Home v. City of Portsmouth](#), 108 N.H. 514, 238 A.2d 730 (1968) (home for persons with incurable ailments); [Lutherans Outdoors in South Dakota, Inc. v. South Dakota State Bd. of Equalization](#), 475 N.W.2d 140 (S.D. 1991) (church parking lot); [First Baptist Church of San Antonio v. Bexar County Appraisal Review Bd.](#), 833 S.W.2d 108 (Tex. 1992) (church parking lot).
- 4 [Wesley United Methodist Church v. Dauphin County Bd. of Assessment Appeals](#), 585 Pa. 677, 889 A.2d 1180 (2005).
- 5 [Streeterville Corp. v. Department of Revenue of State of Ill.](#), 186 Ill. 2d 534, 239 Ill. Dec. 578, 714 N.E.2d 497 (1999); [Lynn Hospital v. Board of Assessors of Lynn](#), 383 Mass. 14, 417 N.E.2d 14 (1981); [Shared Hosp. Services Corp. v. Ferguson](#), 673 S.W.2d 135 (Tenn. 1984).
- 6 [Streeterville Corp. v. Department of Revenue of State of Ill.](#), 186 Ill. 2d 534, 239 Ill. Dec. 578, 714 N.E.2d 497 (1999); [Lynn Hospital v. Board of Assessors of Lynn](#), 383 Mass. 14, 417 N.E.2d 14 (1981).
- 7 [Ellis Hospital v. Fredette](#), 27 A.D.2d 390, 279 N.Y.S.2d 925 (3d Dep't 1967).
- 8 [Bowers v. Akron City Hospital](#), 16 Ohio St. 2d 94, 45 Ohio Op. 2d 445, 243 N.E.2d 95, 33 A.L.R.3d 934 (1968).
- 9 [Application of Syracuse University](#), 59 Misc. 2d 684, 300 N.Y.S.2d 129 (Sup 1969).
- 10 [Church Divinity School of Pacific v. Alameda County](#), 152 Cal. App. 2d 496, 314 P.2d 209 (1st Dist. 1957); [University Circle Development Foundation v. Perk](#), 32 Ohio Op. 2d 213, 95 Ohio L. Abs. 353, 200 N.E.2d 897 (Ct. App. 8th Dist. Cuyahoga County 1964).

- 11 District of Columbia v. George Washington University, 254 F.2d 341 (D.C. Cir. 1958); Ellis Hospital v. Fredette, 27 A.D.2d 390, 279 N.Y.S.2d 925 (3d Dep't 1967).
- 12 Ellis Hospital v. Fredette, 27 A.D.2d 390, 279 N.Y.S.2d 925 (3d Dep't 1967).
- 13 University Circle Development Foundation v. Perk, 32 Ohio Op. 2d 213, 95 Ohio L. Abs. 353, 200 N.E.2d 897 (Ct. App. 8th Dist. Cuyahoga County 1964).
- 14 Bowers v. Akron City Hospital, 16 Ohio St. 2d 94, 45 Ohio Op. 2d 445, 243 N.E.2d 95, 33 A.L.R.3d 934 (1968).
- 15 Diffenderfer v. Central Baptist Church of Miami, Fla., Inc., 404 U.S. 412, 92 S. Ct. 574, 30 L. Ed. 2d 567 (1972).

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71 Am. Jur. 2d State and Local Taxation § 286

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State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Four. Exemptions from Taxation

XV. Persons, Property, and Organizations Exempt from Taxation

D. Eleemosynary, Educational, Religious, and other Like Associations, Institutions, and Organizations

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§ 286. Definition of religious institutions

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[What constitutes church, religious society, or institution exempt from property tax under state constitutional or statutory provisions, 28 A.L.R.4th 344](#)

A religious organization is one which professes a sectarian creed and a belief in a divine and superhuman power.¹ The words "religious society" in the contemplation of a constitutional provision providing for exemption of such bodies from taxation are to be taken in their ordinary accepted meaning as an association or body of communicants or a church usually meeting in some stated place for worship or for instruction or organized for the accomplishment of religious purposes, such as instruction or dissemination of some tenet or particular faith or otherwise furthering its teaching.² Whether an entity has been organized and operated exclusively for religious purposes, as required to be entitled to a property tax exemption, is determined from its charter, bylaws, and actual method and facts relating to its operation.³

Whether an organization is a church for tax purposes is a subjective question focusing on:

- the sincerity of belief⁴
- whether the primary motive in organizing was tax avoidance⁵
- whether the doctrines and beliefs of the organization are intentionally vague and nonbinding on members⁶
- whether there is a formally trained or ordained clergy⁷
- whether members freely continue to practice other religions⁸
- the existence of sacraments, rituals, education courses, or literature of its own⁹
- whether there is a liturgy other than simple meetings or social gatherings¹⁰
- whether it advances religion as a way of life for all¹¹
- whether it requires a belief in a supreme being¹²

A church need not be incorporated to establish tax-exempt status.¹³ Unorthodoxy should not serve to disqualify a religious group from tax exemption so long as the group holds a sincere and meaningful belief in a higher being and dedicates itself to the practice of that belief.¹⁴ A religious organization consisting of members of one family failed to sustain its burden of demonstrating that it was a religious institution or society within the meaning of a tax-exemption statute where the property in question was being used as a home and farm for the family just as it was before the organization was established.¹⁵ The law does not require that an organization whose activities are generically anything but religious be exempted from real property taxes merely because the taxpayer says that those activities are among its theological doctrines.¹⁶

An incidental or secondary purpose, if not for profit, will not defeat a property tax exemption for property used for religious purposes; the relevant question is whether in actuality or practice, the property is used primarily for a religious purpose.¹⁷

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- 1 Pittman v. Sarpy County Bd. of Equalization, 258 Neb. 390, 603 N.W.2d 447 (1999).
- 2 Mordecai F. Ham Evangelistic Ass'n v. Matthews, 300 Ky. 402, 189 S.W.2d 524, 168 A.L.R. 1216 (1945).
- 3 Provena Covenant Medical Center v. Department of Revenue, 236 Ill. 2d 368, 339 Ill. Dec. 10, 925 N.E.2d 1131 (2010).
- 4 Roberts v. Ravenwood Church of Wicca, 249 Ga. 348, 292 S.E.2d 657 (1982); In re Collection of Delinquent Real Property Taxes, 530 N.W.2d 200 (Minn. 1995); Waushara County v. Graf, 166 Wis. 2d 442, 480 N.W.2d 16 (1992).
- 5 In re Collection of Delinquent Real Property Taxes, 530 N.W.2d 200 (Minn. 1995); Waushara County v. Graf, 166 Wis. 2d 442, 480 N.W.2d 16 (1992).
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- 11 In re Collection of Delinquent Real Property Taxes, 530 N.W.2d 200 (Minn. 1995).

- 12 *Roberts v. Ravenwood Church of Wicca*, 249 Ga. 348, 292 S.E.2d 657 (1982); *In re Collection of*
 Delinquent Real Property Taxes, 530 N.W.2d 200 (Minn. 1995); *Missouri Church of Scientology v. State*
 Tax Commission, 560 S.W.2d 837 (Mo. 1977).
- 13 *Waushara County v. Graf*, 166 Wis. 2d 442, 480 N.W.2d 16 (1992).
- 14 *Roberts v. Ravenwood Church of Wicca*, 249 Ga. 348, 292 S.E.2d 657 (1982) (holding that a Wiccan church
 was a religious group entitled to an exemption).
- 15 *Parshall Christian Order v. Board of Review, Marion County*, 315 N.W.2d 798, 28 A.L.R.4th 333 (Iowa
 1982).
- 16 *Holy Spirit Ass'n for Unification of World Christianity v. Tax Commission of City of New York*, 62 A.D.2d
 188, 404 N.Y.S.2d 93 (1st Dep't 1978).
- 17 *Grace Community Church Assemblies of God v. Illinois Dept. of Revenue*, 409 Ill. App. 3d 480, 351 Ill.
 Dec. 323, 950 N.E.2d 1151 (4th Dist. 2011).

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71 Am. Jur. 2d State and Local Taxation § 287

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State and Local Taxation

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§ 287. Exemption for places of worship

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[Property used as dining rooms or restaurants as within tax exemptions extended to property of religious, educational, charitable, or hospital organizations, 72 A.L.R.2d 521](#)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 104](#) (Answer—Defense—Taxpayer's building not property used by a religious society)

Churches and other religious institutions enjoy no inherent exemption from taxation; their property is taxable except so far as it is specifically exempted by constitutional or statutory enactment.¹ The rule of strict construction applies in the determination of whether property is exempt as belonging to a religious body or devoted to a religious use. Such a law cannot be made by judicial construction to embrace other subjects than those plainly expressed therein.² The property tax exemption for religious organizations is based on the theory that the State has determined that certain entities, which exist in a harmonious relationship to the community at large and which foster its moral or mental improvement, should not be inhibited in their activities by property taxation. The state has an affirmative policy that considers these groups as beneficial and stabilizing influences in the community life and finds this classification useful, desirable, and in the public interest.³

Statutes frequently provide an exemption for property owned by a religious organization and used exclusively for religious worship.⁴ Under such a provision, the property must be used in a principal, primary, and essential way to facilitate public worship.⁵ However, a place of religious worship includes not only the sanctuary but also the grounds and structures surrounding the sanctuary which are necessary for the use and enjoyment of the church.⁶ An incidental use serving to promote the primary purpose of religious worship does not disqualify the property from exemption.⁷

Other statutes exempt property owned by a religious society used exclusively for religious purposes.⁸ Under such a statute, the primary and dominant purpose of the property must be religious, but it is not defined narrowly as worship.⁹

Exemptions of religious institutions from taxation include, as an incident thereto, land around such institutions reasonably necessary for convenient ingress and egress, light, air, or appropriate and decent ornament.¹⁰ However, lots adjacent to a church building which are not reasonably needed for the convenient enjoyment of the building as a church, and which are leased for other purposes¹¹ or are not used for any purpose, are not exempt.¹² Exempt property may include undeveloped land surrounding a church structure,¹³ but vacant, undeveloped land not contiguous to any church structure is not exempt.¹⁴ However, any improvement that a church or religious organization uses for worship may qualify.¹⁵

CUMULATIVE SUPPLEMENT

Cases:

Taxpayer that formerly operated a church and a religious school on property it owned was not entitled to a religious exemption from ad valorem taxation during years after dissolution when it leased property to a new church and new religious school, even though owner of new church and school was taxpayer's former employee; relationship between taxpayer and owner did not create a corporate or contractual relationship, taxpayer admitted new church and school were distinct and separate entities, and taxpayer was not entity that operated new church and school on taxpayer's property during years subject to taxation. [Fla. Stat. Ann. § 196.192\(1\)](#). [Genesis Ministries, Inc. v. Brown](#), 250 So. 3d 865 (Fla. 1st DCA 2018).

Property owner's exemption from taxation as a house of worship controlled over a real covenant concerning service payments owed to township in connection with a tax-increment financing (TIF) exemption; statute governing priority of tax exemptions granted priority to the house-of-worship exemption and invalidated any requirement that the service payments be made, so that the real covenant was unenforceable as against public policy. [Ohio Rev. Code Ann. §§ 5709.07\(A\)\(2\), 5709.911](#). [Fairfield Township Board of Trustees v. Testa](#), 153 Ohio St. 3d 255, 2018-Ohio-2381, 104 N.E.3d 749 (2018).

[END OF SUPPLEMENT]

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- 1 Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Ada County, 123 Idaho 410, 849 P.2d 83 (1993); Mordecai F. Ham Evangelistic Ass'n v. Matthews, 300 Ky. 402, 189 S.W.2d 524, 168 A.L.R. 1216 (1945); North American Old Roman Catholic Diocese v. Havens, 164 Miss. 119, 144 So. 473, 84 A.L.R. 1313 (1932); Franklin St. Soc. v. Manchester, 60 N.H. 342, 1880 WL 4991 (1880); Episcopal Parish of Christ Church, Glendale v. Kinney, 58 Ohio St. 2d 199, 12 Ohio Op. 3d 197, 389 N.E.2d 847 (1979); Tax Commission of Ohio v. Paxson, 118 Ohio St. 36, 6 Ohio L. Abs. 62, 160 N.E. 468 (1928).
- 2 Agape Church, Inc. v. Pulaski County, 307 Ark. 420, 821 S.W.2d 21 (1991); Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Ada County, 123 Idaho 410, 849 P.2d 83 (1993); Mordecai F. Ham Evangelistic Ass'n v. Matthews, 300 Ky. 402, 189 S.W.2d 524, 168 A.L.R. 1216 (1945); Ramsey County v. Church of the Good Shepherd, 45 Minn. 229, 47 N.W. 783 (1891); Old Fashion Baptist Church v. Montana Dept. of Revenue, 206 Mont. 451, 671 P.2d 625 (1983); Young Men's Christian Ass'n of Omaha v. Douglas County, 60 Neb. 642, 83 N.W. 924 (1900); Simpson v. International Community of Christ, Church of the Second Advent for the Establishment of the Religion of Cosolargy, 106 Nev. 458, 796 P.2d 217 (1990); Tax Commission of Ohio v. Paxson, 118 Ohio St. 36, 6 Ohio L. Abs. 62, 160 N.E. 468 (1928).
- 3 Peninsula Covenant Church v. County of San Mateo, 94 Cal. App. 3d 382, 156 Cal. Rptr. 431 (1st Dist. 1979).
- 4 Supervisor of Assessments of Baltimore County v. Keeler, 362 Md. 198, 764 A.2d 821 (2001); In re Collection of Delinquent Real Property Taxes, 530 N.W.2d 200 (Minn. 1995); Central States Christian Endeavors Ass'n v. Nelson, 898 S.W.2d 547 (Mo. 1995); Christian Church of Ohio v. Limbach, 53 Ohio St. 3d 270, 560 N.E.2d 199 (1990); First Baptist Church of San Antonio v. Bexar County Appraisal Review Bd., 833 S.W.2d 108 (Tex. 1992).
A chapel at a skilled nursing facility was a "house of religious worship" in light of evidence regarding the use of the chapel exclusively as a place of prayer and worship and its central role in the spiritual aspects of the facility's mission. *St. Joseph's Living Center, Inc. v. Town of Windham*, 290 Conn. 695, 966 A.2d 188 (2009).
- 5 Christian Church of Ohio v. Limbach, 53 Ohio St. 3d 270, 560 N.E.2d 199 (1990).
- 6 First Baptist Church of San Antonio v. Bexar County Appraisal Review Bd., 833 S.W.2d 108 (Tex. 1992).
A cultural center of a taxpayer, a not-for-profit corporation, qualified for a religious purposes exemption from property tax for a certain tax year; the taxpayer presented evidence as to which church-affiliated organizations regularly used the cultural center, the taxpayer provided a month-by-month listing of events that took place in the cultural center during certain tax years, and documents prima facie established that the cultural center was used 63% of the time for a religious purpose. *Lake County Property Tax Assessment Bd. of Appeals v. St. George Serbian Orthodox Church*, 905 N.E.2d 536 (Ind. Tax Ct. 2009).
- 7 Central States Christian Endeavors Ass'n v. Nelson, 898 S.W.2d 547 (Mo. 1995).
- 8 In re Collection of Delinquent Real Property Taxes, 530 N.W.2d 200 (Minn. 1995); Lutherans Outdoors in South Dakota, Inc. v. South Dakota State Bd. of Equalization, 475 N.W.2d 140 (S.D. 1991); Waushara County v. Graf, 166 Wis. 2d 442, 480 N.W.2d 16 (1992).
- 9 Lutherans Outdoors in South Dakota, Inc. v. South Dakota State Bd. of Equalization, 475 N.W.2d 140 (S.D. 1991).
- 10 All Saints Parish v. Inhabitants of Town of Brookline, 178 Mass. 404, 59 N.E. 1003 (1901); Old Fashion Baptist Church v. Montana Dept. of Revenue, 206 Mont. 451, 671 P.2d 625 (1983); Harrison v. Guilford County, 218 N.C. 718, 12 S.E.2d 269 (1940); First Baptist Church of Pittsburgh v. City of Pittsburgh, 341 Pa. 568, 20 A.2d 209, 134 A.L.R. 1169 (1941).
- 11 Gibbons v. District of Columbia, 116 U.S. 404, 6 S. Ct. 427, 29 L. Ed. 680 (1886).
- 12 Gibbons v. District of Columbia, 116 U.S. 404, 6 S. Ct. 427, 29 L. Ed. 680 (1886); Old Fashion Baptist Church v. Montana Dept. of Revenue, 206 Mont. 451, 671 P.2d 625 (1983); Simpson v. International Community of Christ, Church of the Second Advent for the Establishment of the Religion of Cosolargy, 106 Nev. 458, 796 P.2d 217 (1990); Appeal of Emissaries of Divine Light, 140 N.H. 552, 669 A.2d 802 (1995).
- 13 Supervisor of Assessments of Baltimore County v. Keeler, 362 Md. 198, 764 A.2d 821 (2001).
- 14 St. George Antiochian Orthodox Christian Church v. Aggarwal, 326 Md. 90, 603 A.2d 484 (1992).

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[Simpson v. International Community of Christ, Church of the Second Advent for the Establishment of the Religion of Cosolargy](#), 106 Nev. 458, 796 P.2d 217 (1990).

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§ 288. Parsonages or residences of ministers, priests, nuns, sextons, etc

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[Taxation: exemption of parsonage or residence of minister, priest, rabbi, or other church personnel, 55 A.L.R.3d 356](#)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 100](#) (Complaint, petition, or declaration—Allegation—Religious organization's use of property as residence)

In some states, ministers' and priests' residences are expressly exempted.¹ A "parsonage" is defined as a building owned by a religious organization as a residence by a designated minister who ministers to a specific localized congregation that gathers to worship at frequent intervals.²

Under an express statutory exemption, a single parish may have more than one exempt residence,³ and the residence of an assistant pastor may qualify for exemption.⁴ The statutory exemption will not apply to a residence owned by the minister and not by the religious organization.⁵

Where there is no express exemption, parsonages, residences of ministers, and parish houses owned by a church society or corporation, and occupied as a residence by the pastor, rector, or priest of a church, are usually not included within the more general exemptions from taxation of property used for religious purposes.⁶ In some instances, this conclusion is the result of the application of the test that the direct and immediate use of the buildings in question, and not their incidental use or ownership or proximity to the church edifice, is the determining factor.⁷ The parsonage or residence of the minister or priest is held not to be within the meaning of provisions exempting "houses used exclusively for public worship,"⁸ "buildings for religious worship,"⁹ or "property used exclusively for religious purposes"¹⁰ although contrary authority exists with respect to the last-mentioned provision.¹¹ Under another line of cases, it is not the mere use of the property which determines the right to exemption but rather the "purpose of the use" which controls; this, of course, means that in the cases under consideration, it is not the fact that the particular building being considered is occupied as a residence, but rather the underlying or primary purpose of such occupation, which determines the question of exemption.¹²

In order for any "parsonage" to be exempted from property taxes, there must be an affirmative demonstration made that the property is used by the tax-exempt claimant for some type of institutional necessity rather than for mere "considerations of residential convenience."¹³ Thus, a parsonage owned by a church and used by a minister was in furtherance of religious purposes and was exempt.¹⁴

CUMULATIVE SUPPLEMENT

Cases:

A "convent," for purposes of statute exempting certain property owned by a religious organization from property taxation, consists of a community of people who live together, follow strict religious vows, and devote themselves full-time to religious work. *West's Ann.Md.Code, Tax-Property, § 7-204. Green v. Church of Jesus Christ of Latter-Day Saints*, 430 Md. 119, 59 A.3d 1001 (2013).

[END OF SUPPLEMENT]

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Footnotes

- 1 *Jersey City v. Beth-El Baptist Church*, 18 N.J. Misc. 208, 12 A.2d 152 (B.T.A. 1940); *City of Nome v. Catholic Bishop of Northern Alaska*, 707 P.2d 870 (Alaska 1985); *Town of Woodstock v. The Retreat*, 125 Conn. 52, 3 A.2d 232 (1938); *Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Ada County*, 123 Idaho 410, 849 P.2d 83 (1993); *McKenzie v. Johnson*, 98 Ill. 2d 87, 74 Ill. Dec. 571, 456 N.E.2d 73, 14 Ed. Law Rep. 750 (1983); *Supervisor of Assessments of Baltimore County v. Trustees of Bosley Methodist Church Graveyard*, 293 Md. 208, 443 A.2d 91 (1982); *Watts v. Board of Assessors of*

Weston, 382 Mass. 688, 414 N.E.2d 1003 (1981); *St. John's Evangelical Lutheran Church v. City of Bay City*, 114 Mich. App. 616, 319 N.W.2d 378, 4 Ed. Law Rep. 624 (1982); *Appeal of Emissaries of Divine Light*, 140 N.H. 552, 669 A.2d 802 (1995); *North Dakota Conference Ass'n of Seventh-Day Adventists v. Board of County Com'rs, Stutsman County*, 234 N.W.2d 912 (N.D. 1975); *Protestant Episcopal Church of Parish of St. Phillips v. Prioleau*, 63 S.C. 70, 40 S.E. 1026 (1902); *Lutherans Outdoors in South Dakota, Inc. v. South Dakota State Bd. of Equalization*, 475 N.W.2d 140 (S.D. 1991); *Waushara County v. Graf*, 166 Wis. 2d 442, 480 N.W.2d 16 (1992).

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§ 289. Other uses of property owned by religious organization

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[Taxation: exemption of parsonage or residence of minister, priest, rabbi, or other church personnel, 55 A.L.R.3d 356](#)

The world headquarters of a church at which no public worship services were conducted did not qualify for an exemption as a building exclusively used for public worship.¹ A church-owned nonprofit printing operation was not entitled to a property tax exemption.² However, property used for administrative and publishing activities of a religious organization devoted to the diffusing of religious knowledge; the promoting of principles of morality, benevolence, and charity; and the education of mankind in general was entitled to an exemption from property taxation.³

Property which is used as a place of residence for employees of a charitable institution, and owned by it, has been held to be exempt from taxation in some cases⁴ and subject to taxation in others.⁵ A building housing a cafeteria, sleeping rooms, and retreat headquarters was not exclusively for public worship and was not exempt.⁶ Land owned by a church as a residence for

visitors was not exempt because it was not used principally for religious purposes.⁷ It has been held that the use of a building as a residence for Catholic sisters and the celebration of daily Mass therein constituted an exclusive use for religious purposes warranting an exemption from taxation notwithstanding that the services were restricted to the members of the order and were not open to the public.⁸ However, there is also authority that property used as a convent for an order of nuns was nonexempt.⁹ The authorities are not in accord as to whether the residence of a church caretaker or sexton is exempt as property used for religious purposes. Some cases hold that such property is not exempt¹⁰ while others have found a home owned by the church and used by a couple in exchange for caretaking and office duties of the church was exempt because it was reasonably necessary for the accomplishment of church purposes.¹¹

A church's vacant lot for overflow parking was exempt from ad valorem taxes as a "place of religious worship" where the proper use, occupancy, and enjoyment of a place of religious worship could require accommodation for vehicles of the members of the attending congregation.¹² However, unused property cannot qualify for a property tax exemption as property used for religious purposes.¹³

CUMULATIVE SUPPLEMENT

Cases:

To qualify for the property tax exemption for property used for religious or charitable purposes: (1) the petitioner must be organized exclusively for the purposes enumerated in the statute; (2) the property in question must be used primarily for the furtherance of such purposes; (3) no pecuniary profit, apart from reasonable compensation, may inure to the benefit of any officers, members, or employees; and (4) petitioner may not be simply used as a guise for profit-making operations. [McKinney's RPTL § 420-a\(1\)\(a\)](#). [Maetreum of Cybele, Magna Mater, Inc. v. McCoy](#), 111 A.D.3d 1098, 975 N.Y.S.2d 251 (3d Dep't 2013).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Christian Church of Ohio v. Limbach](#), 53 Ohio St. 3d 270, 560 N.E.2d 199 (1990).
- 2 [Hubbard Press v. Tracy](#), 67 Ohio St. 3d 564, 1993-Ohio-3, 621 N.E.2d 396 (1993).
- 3 [General Conference of Church of God-7th Day v. Carper](#), 192 Colo. 178, 557 P.2d 832 (1976).
- 4 [Fredericka Home for the Aged v. San Diego County](#), 35 Cal. 2d 789, 221 P.2d 68 (1950); [Central States Christian Endeavors Ass'n v. Nelson](#), 898 S.W.2d 547 (Mo. 1995); [Warman v. Tracy](#), 72 Ohio St. 3d 217, 1995-Ohio-45, 648 N.E.2d 833 (1995); [White v. Smith](#), 189 Pa. 222, 42 A. 125 (1899).
- 5 [City of Nome v. Catholic Bishop of Northern Alaska](#), 707 P.2d 870 (Alaska 1985).
- 6 [Faith Fellowship Ministries, Inc. v. Limbach](#), 32 Ohio St. 3d 432, 513 N.E.2d 1340 (1987); [Appeal of Laymen's Weekend Retreat League of Philadelphia](#), 21 Pa. Commw. 175, 343 A.2d 714 (1975).
- 7 [Appeal of Emissaries of Divine Light](#), 140 N.H. 552, 669 A.2d 802 (1995).
- 8 [St. Barbara's Roman Catholic Church v. City of New York](#), 243 A.D. 371, 277 N.Y.S. 538 (2d Dep't 1935).
- 9 [People ex rel. Carson v. Muldoon](#), 306 Ill. 234, 137 N.E. 863, 28 A.L.R. 857 (1922).
- 10 [Indiana Ass'n of Seventh-Day Adventists v. State Bd. of Tax Com'rs](#), 519 N.E.2d 772 (Ind. Tax Ct. 1988); [Supervisor of Assessments of Baltimore County v. Trustees of Bosley Methodist Church Graveyard](#), 293 Md. 208, 443 A.2d 91 (1982); [Foundation of Human Understanding v. Department of Revenue](#), 301 Or. 254, 722 P.2d 1 (1986); [City of Pittsburgh v. Third Presbyterian Church](#), 10 Pa. Super. 302, 1899 WL 4000 (1899).
- 11 [Victory Lutheran Church v. Hennepin County](#), 373 N.W.2d 279 (Minn. 1985).
- 12 [Marathon Inv. Corp. v. Spinkston](#), 281 Ga. 888, 644 S.E.2d 133 (2007).

13

[Grace Community Church Assemblies of God v. Illinois Dept. of Revenue](#), 409 Ill. App. 3d 480, 351 Ill. Dec. 323, 950 N.E.2d 1151 (4th Dist. 2011).

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71 Am. Jur. 2d State and Local Taxation § 290

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Four. Exemptions from Taxation

XV. Persons, Property, and Organizations Exempt from Taxation

D. Eleemosynary, Educational, Religious, and other Like Associations, Institutions, and Organizations

3. Particular Associations, Institutions, and Organizations

b. Educational and Scientific Institutions

§ 290. Educational institutions, generally

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West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2346, 2348, 2351

A.L.R. Library

[Receipt of pay from beneficiaries as affecting tax exemption of charitable institutions, 37 A.L.R.3d 1191](#)

"Education," taken in its full sense, is a broad, comprehensive term and may be particularly directed to mental, moral, or physical faculties, but in its broadest and best sense, it embraces them all and includes not merely the instructions received at a school, college, or university but also the whole course of training—moral, intellectual, and physical.¹ Recreation and athletic programs are considered within the educational purpose of a school or other educational institution.² An "educational institution" has been defined as one which teaches and improves its pupils, that is, a school, seminary of learning, academy, college, or university,³ although the term has sometimes been limited to those providing educational programs that would otherwise be provided by a tax-supported school.⁴ An educational organization is one that offers regular courses with systematic instruction in academic, vocational, or technical subjects.⁵ The word "school" is declared to mean a place where a systematic instruction in useful

branches of knowledge is given by methods common to schools and institutions of learning as distinguished from schools conducted for teaching, dancing, riding, deportment, and other things, which are not schools in the ordinary sense.⁶

Whatever exemption from taxation exists in favor of educational institutions arises from a constitutional or statutory provision therefor, and in many jurisdictions, such provisions exist.⁷ In general, educational institutions kept and maintained for profit are regarded as taxable in the same manner as other business enterprises⁸ even if provision is made for the payment of the tuition fees of the children of poor parents out of an endowment fund.⁹ In fact, statutes often expressly limit such exemptions to educational institutions not used for gain. If, however, an educational institution is not conducted for profit, it is as a general rule considered to be exempt, even if the students are charged fees for tuition, or for the use of dormitories, equipment, and the like,¹⁰ or even if the school is under the control of a particular religious denomination or sect,¹¹ although fee-charging educational institutions have been held not to come within the contemplation of enactments granting tax exemptions to "charity schools."¹²

There is authority that the constitutional and statutory provisions exempting institutions of learning from taxation are construed less strictly than other tax exemption provisions because the policy of the state is to encourage the establishment of private educational institutions.¹³ In fact, the rule of strict construction of exemption statutes has even been rejected in situations involving institutions of learning.¹⁴

CUMULATIVE SUPPLEMENT

Cases:

Board of Review's finding that daycare facility operating on property provided activities that fostered an atmosphere of education was insufficient to establish property's predominant use was for educational purpose, as was required for taxpayer to qualify for exemption from property taxes for property used for educational purposes, in absence of time-usage comparison; property was used for both educational and noneducational activities, taxpayer did not identify and explain how each of daycare facility's furthered educational purpose, and taxpayer failed to compare the relative amounts of time the property was used for exempt educational purposes to overall time property was used for all purposes. [Ind. Code Ann. §§ 6-1.1-10-16\(a\), 6-1.1-10-36.3\(a\). Hamilton County Assessor v. Duke, 69 N.E.3d 567 \(Ind. Tax Ct. 2017\).](#)

As used in State Constitution's educational use real property tax exemption, phrase "used for educational purposes" means the direct, immediate, primary and substantial use of property, not the remote and consequential benefit derived from its use. [West's NMSA Const. Art. 8, § 3. CAVU Co. v. Martinez, 2014-NMSC-029, 332 P.3d 287 \(N.M. 2014\).](#)

College was not entitled to public use exemption from property tax for its building for years in which the state leased a portion of the building, where college's nonprofit ownership and state's use lacked concurrence, such that the two did not have a single mission. [32 Vt. Stat. Ann. § 3802\(4\). Vermont College of Fine Arts v. City of Montpelier, 2017 VT 12, 165 A.3d 1065 \(Vt. 2017\).](#)

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Footnotes

- 1 [Cummington School of Arts, Inc. v. Board of Assessors of Cummington, 373 Mass. 597, 369 N.E.2d 457 \(1977\); Ancient and Accepted Scottish Rite of Freemasonry v. Board of County Com'rs, 122 Neb. 586, 241 N.W. 93, 81 A.L.R. 1166 \(1932\).](#)

- 2 Red Top, Inc. v. Board of Tax Review of Town of Ledyard, 181 Conn. 343, 435 A.2d 364 (1980); National Collegiate Realty Corp. v. Board of County Com'rs of Johnson County, 236 Kan. 394, 690 P.2d 1366, 21 Ed. Law Rep. 713 (1984).
- 3 Lois Grunow Memorial Clinic v. Oglesby, 42 Ariz. 98, 22 P.2d 1076 (1933); New Canaan Academy, Inc. v. Town of Canaan, 122 N.H. 134, 441 A.2d 1174, 2 Ed. Law Rep. 1103, 34 A.L.R.4th 692 (1982).
- 4 Michigan United Conservation Clubs v. Lansing Tp., 423 Mich. 661, 378 N.W.2d 737 (1985); American Ass'n of Cereal Chemists v. County of Dakota, 454 N.W.2d 912 (Minn. 1990); South Dakota Hairstyling, Inc. v. Minnehaha County, 88 S.D. 682, 227 N.W.2d 431 (1975).
- 5 Pittman v. Sarpy County Bd. of Equalization, 258 Neb. 390, 603 N.W.2d 447 (1999).
- 6 People ex rel. McCullough v. Deutsche Evangelisch Lutherische Jehovah Gemeinde, etc. (State Report Title: People v. Deutsche Evangelisch Lutherische Jehovah Gemeinde Ungeaenderter Augsburgischer Confession), 249 Ill. 132, 94 N.E. 162 (1911).
- 7 Pasadena University v. Los Angeles County, 190 Cal. 786, 214 P. 868 (1923); Red Top, Inc. v. Board of Tax Review of Town of Ledyard, 181 Conn. 343, 435 A.2d 364 (1980); Zach, Inc. v. Fulton County, 271 Ga. 411, 520 S.E.2d 899, 139 Ed. Law Rep. 703 (1999); People ex rel. McCullough v. Deutsche Evangelisch Lutherische Jehovah Gemeinde, etc. (State Report Title: People v. Deutsche Evangelisch Lutherische Jehovah Gemeinde Ungeaenderter Augsburgischer Confession), 249 Ill. 132, 94 N.E. 162 (1911); National Collegiate Realty Corp. v. Board of County Com'rs of Johnson County, 236 Kan. 394, 690 P.2d 1366, 21 Ed. Law Rep. 713 (1984); Michigan United Conservation Clubs v. Lansing Tp., 423 Mich. 661, 378 N.W.2d 737 (1985); American Ass'n of Cereal Chemists v. County of Dakota, 454 N.W.2d 912 (Minn. 1990); St. Paul's School v. City of Concord, 117 N.H. 243, 372 A.2d 269 (1977); Society of Holy Child Jesus v. City of Summit, 418 N.J. Super. 365, 13 A.3d 886 (App. Div. 2011); City of Washington v. Board of Assessment Appeals of Washington County, 550 Pa. 175, 704 A.2d 120, 123 Ed. Law Rep. 245 (1997); South Dakota Hairstyling, Inc. v. Minnehaha County, 88 S.D. 682, 227 N.W.2d 431 (1975); Northwestern Pub. House v. City of Milwaukee, 177 Wis. 401, 188 N.W. 636 (1922).
- 8 J.A.T.T. Title Holding Corp. v. Roberts, 258 Ga. 519, 371 S.E.2d 861, 49 Ed. Law Rep. 449 (1988); Behnke-Walker Business College v. Multnomah County, 173 Or. 510, 146 P.2d 614 (1944); Wyoming Valley Montessori Ass'n, Inc. v. Board of Assessment Appeals of Luzerne County, 110 Pa. Commw. 458, 532 A.2d 931, 42 Ed. Law Rep. 620 (1987); South Dakota Hairstyling, Inc. v. Minnehaha County, 88 S.D. 682, 227 N.W.2d 431 (1975).
- 9 City of Philadelphia v. Overseers of Public Schools, 170 Pa. 257, 32 A. 1033 (1895).
- 10 Connecticut Junior Republic Ass'n v. Town of Litchfield, 119 Conn. 106, 174 A. 304, 95 A.L.R. 56 (1934); Santa Clara Female Academy v. Sullivan, 116 Ill. 375, 6 N.E. 183 (1886); Cummington School of Arts, Inc. v. Board of Assessors of Cummington, 373 Mass. 597, 369 N.E.2d 457 (1977); City of Washington v. Board of Assessment Appeals of Washington County, 550 Pa. 175, 704 A.2d 120, 123 Ed. Law Rep. 245 (1997); Maxcy v. City of Oshkosh, 144 Wis. 238, 128 N.W. 899 (1910).
- 11 Trustees of Kentucky Female Orphan School v. City of Louisville, 100 Ky. 470, 19 Ky. L. Rptr. 1091, 19 Ky. L. Rptr. 1916, 36 S.W. 921 (1896); White v. Smith, 189 Pa. 222, 42 A. 125 (1899).
- 12 Trustees of Kentucky Female Orphan School v. City of Louisville, 100 Ky. 470, 19 Ky. L. Rptr. 1091, 19 Ky. L. Rptr. 1916, 36 S.W. 921 (1896).
- 13 Bishop, etc., of the Cathedral of St. John the Evangelist v. Treasurer of Arapahoe County, 29 Colo. 143, 68 P. 272 (1901); Webb Academy v. City of Grand Rapids, 209 Mich. 523, 177 N.W. 290 (1920); Concordia College Corp. v. State, 265 Minn. 136, 120 N.W.2d 601 (1963); State v. Waggoner, 162 Tenn. 172, 35 S.W.2d 389 (1931).
- 14 Church Divinity School of Pacific v. Alameda County, 152 Cal. App. 2d 496, 314 P.2d 209 (1st Dist. 1957); Arnold College for Hygiene and Physical Ed. v. Town of Milford, 144 Conn. 206, 128 A.2d 537 (1957).

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State and Local Taxation

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§ 291. Particular institutions as educational

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A.L.R. Library

[What are educational institutions or schools within state property tax exemption provisions, 34 A.L.R.4th 698](#)

The expression "educational institution," or similar or related expressions in tax exemption statutes, has been held to include:

- schools for the arts¹
- trade schools²
- boarding schools³
- colleges of medicine and pharmacy⁴

- military schools⁵
- art galleries, museums⁶
- theaters⁷
- a local civic theater organization whose activities and programs contribute importantly to improving health and fitness and providing recreational opportunities to those members of the public who purchased admission tickets⁸
- public libraries⁹

A vocational school is often not considered an educational institution.¹⁰ A school for instruction in the meditative arts, which consisted primarily of sitting in meditation, instruction in Tai Chi, and a course entitled Zen basketball, was not an educational institution.¹¹ The exemption from taxation of educational institutions extends to such as are founded and controlled by a particular religious sect for instructions according to its doctrines.¹² However, mere incidental use of property for educational purposes by a labor union not organized for educational purposes is not enough to exempt such property from taxation under a constitutional provision for the exemption of property used for literary, educational, and scientific purposes and under a statute requiring that the property be actually used for the purpose authorizing its exemption.¹³ A training center operated predominantly for the benefit of the construction industry was not a school.¹⁴ The headquarters of a bar association, where members can meet and dine, was not primarily an educational institution.¹⁵

An organization which regulates and promotes intercollegiate athletic events among its member colleges and universities is an educational institution.¹⁶

A child-care facility is not an educational institution,¹⁷ but has been held exempt as serving the educational purposes of a university, where it was operated to benefit students who might not otherwise be able to attend the university.¹⁸ Moreover, evidence that a day-care center made daily use of a structured instructional curriculum and used specific programs relating to language and cognitive development, music, nature study, basic math, and physical development, and that each of the center's buildings contained classrooms and learning center stations, supported the conclusion that the facility was substantially and primarily devoted to educational purposes entitling it to an exemption from general property taxes.¹⁹

A camp school was entitled to tax exemption where: (1) the school offered an intensive academic program designed to prepare students for work at a secondary school, to fulfill course credits at a secondary school, or to make up courses failed during the academic year; and (2) standard textbooks were used, the instructors were qualified teachers, and the course of study fit into the scheme of traditional education, including the branches of instruction usually included in an academic course of secondary schools in the state.²⁰ Warehouses and administrative buildings used for and by public schools and libraries are within the definition of both the public school system and a free public library for purposes of tax exemption.²¹

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Footnotes

- 1 [Cummington School of Arts, Inc. v. Board of Assessors of Cummington](#), 373 Mass. 597, 369 N.E.2d 457 (1977).
- 2 [J.A.T.T. Title Holding Corp. v. Roberts](#), 258 Ga. 519, 371 S.E.2d 861, 49 Ed. Law Rep. 449 (1988).
- 3 [State ex rel. Fatzer v. Board of Regents of State of Kan.](#), 167 Kan. 587, 207 P.2d 373 (1949).

- 4 Louisville College of Pharmacy v. City of Louisville, 26 Ky. L. Rptr. 825, 82 S.W. 610 (Ky. 1904); Omaha Medical College v. Rush, 22 Neb. 449, 35 N.W. 222 (1887).
- 5 State v. State Board of Assessors, 65 N.J.L. 516, 47 A. 558 (N.J. Sup. Ct. 1900).
- 6 In re Mergentime's Estate, 129 A.D. 367, 113 N.Y.S. 948 (1st Dep't 1908), *aff'd*, 195 N.Y. 572, 88 N.E. 1125 (1909).
- 7 Paper Mill Playhouse v. Millburn Tp., 95 N.J. 503, 472 A.2d 517, 42 A.L.R.4th 591 (1984); Symphony Space, Inc. v. Tishelman, 60 N.Y.2d 33, 466 N.Y.S.2d 677, 453 N.E.2d 1094 (1983).
- 8 Apollo Civic Theatre, Inc. v. State Tax Com'r, 223 W. Va. 79, 672 S.E.2d 215 (2008).
- 9 Webster City v. Wright County, 144 Iowa 502, 123 N.W. 193 (1909).
- 10 South Dakota Hairstyling, Inc. v. Minnehaha County, 88 S.D. 682, 227 N.W.2d 431 (1975) (holding that the statute does not include a hairstyling school).
- 11 New Canaan Academy, Inc. v. Town of Canaan, 122 N.H. 134, 441 A.2d 1174, 2 Ed. Law Rep. 1103, 34 A.L.R.4th 692 (1982).
- 12 Trustees of Kentucky Female Orphan School v. City of Louisville, 100 Ky. 470, 19 Ky. L. Rptr. 1091, 19 Ky. L. Rptr. 1916, 36 S.W. 921 (1896).
- 13 Johnson v. Sparkman, 159 Fla. 276, 31 So. 2d 863, 172 A.L.R. 1067 (1947); LaManna v. Electrical Workers Local Union No. 474 of Intern. Broth. of Elec. Workers, AFL-CIO, 518 S.W.2d 348 (Tenn. 1974).
- 14 New Jersey Carpenters Apprentice Training and Educ. Fund v. Borough of Kenilworth, 147 N.J. 171, 685 A.2d 1309 (1996).
- 15 Chicago Bar Ass'n v. Department of Revenue, 163 Ill. 2d 290, 206 Ill. Dec. 113, 644 N.E.2d 1166, 96 Ed. Law Rep. 1032 (1994).
- 16 National Collegiate Realty Corp. v. Board of County Com'rs of Johnson County, 236 Kan. 394, 690 P.2d 1366, 21 Ed. Law Rep. 713 (1984).
- 17 State v. Kinder-Care Learning Centers, Inc., 418 So. 2d 859 (Ala. 1982); Association of Little Friends, Inc. v. City of Escanaba, 138 Mich. App. 302, 360 N.W.2d 602 (1984).
- 18 St. Ambrose University v. Board of Review for City of Davenport, 503 N.W.2d 406, 84 Ed. Law Rep. 843 (Iowa 1993).
- 19 Janesville Community Day Care Center, Inc. v. Spoden, 126 Wis. 2d 231, 376 N.W.2d 78, 28 Ed. Law Rep. 575 (Ct. App. 1985).
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§ 292. School dormitories, dining halls

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West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2347

A.L.R. Library

[Tax exemption of property of educational body as extending to property used by personnel as living quarters, 55 A.L.R.3d 485](#)

[Property used as dining rooms or restaurants as within tax exemptions extended to property of religious, educational, charitable, or hospital organizations, 72 A.L.R.2d 521](#)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 98](#) (Complaint, petition, or declaration—To have building used as dormitory for parochial school declared exempt from taxation—To enjoin enforcement of tax levied against building)

The principle that the exemption of educational institutions extends only to property used for the purposes of the institution is applied in the case of endowed universities, colleges, and academies.¹ This does not mean that the exemption is limited to property on which educational activities take place; rather, the property must be used for, and be reasonably necessary to, educational purposes.² Dormitories and dining halls furnished by a university, college, or boarding academy for the use of its students are exempt.³ Where a private foundation operates a dormitory at no profit which provides students with low cost housing, such housing is exempt.⁴ However, a private company which provides university student and faculty housing at market rates is not a charitable organization and cannot qualify for an exemption.⁵

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Footnotes

- 1 Board of Directors of Chicago Theological Seminary v. People of State of Illinois ex rel. Raymond, 188 U.S. 662, 23 S. Ct. 386, 47 L. Ed. 641 (1903); State v. Laurel Crest Academy, 2 Conn. Cir. Ct. 294, 198 A.2d 229 (App. Div. 1963); St. Paul's School v. City of Concord, 117 N.H. 243, 372 A.2d 269 (1977).
- 2 Friends School v. Supervisor of Assessments of Baltimore City, 314 Md. 194, 550 A.2d 657, 50 Ed. Law Rep. 475 (1988).
- 3 Mann v. County of Alameda, 85 Cal. App. 3d 505, 149 Cal. Rptr. 552 (1st Dist. 1978); State v. Laurel Crest Academy, 2 Conn. Cir. Ct. 294, 198 A.2d 229 (App. Div. 1963); McKenzie v. Johnson, 98 Ill. 2d 87, 74 Ill. Dec. 571, 456 N.E.2d 73, 14 Ed. Law Rep. 750 (1983); State ex rel. Fatzer v. Board of Regents of State of Kan., 167 Kan. 587, 207 P.2d 373 (1949); President, etc., of Harvard College v. Assessors of Cambridge, 175 Mass. 145, 55 N.E. 844 (1900); Worthington Dormitory, Inc. v. Commissioner of Revenue, 292 N.W.2d 276 (Minn. 1980); Order of St. Benedict v. Gordon, 417 A.2d 881 (R.I. 1980).
- 4 Worthington Dormitory, Inc. v. Commissioner of Revenue, 292 N.W.2d 276 (Minn. 1980).
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§ 293. Fraternity houses

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A.L.R. Library

[Exemption from taxation of college fraternity or sorority house](#), 66 A.L.R.2d 904

Tax exemption provisions in favor of educational institutions do not shield college fraternity houses from taxation, even if some literary and educational work is done therein, inasmuch as their primary purpose is to furnish for the use of fraternity members a place where student members may congregate, make their homes, and eat their meals.¹ They are beneficial rather than benevolent.² However, the circumstances of the use of a particular building erected by a college, fraternity, or sorority, in the light of the terms of the particular exemption provision involved, may entitle the building to a tax exemption.³ For a residential building to come within the exemption for educational purposes, there must be a sufficient nexus between the property and the educational institution.⁴ Where the university owns the buildings on its campus which are used as fraternity houses and operate as an integral part of its student housing system, and the buildings are subject to the control of the university, the fraternity houses are exempt.⁵ However, fraternity houses owned by the fraternity are not tax-exempt merely because students happen to

live there.⁶ Also, a tax exemption for fraternity-owned property is limited to property used for the public purpose of housing students.⁷

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Footnotes

- 1 Zach, Inc. v. Fulton County, 271 Ga. 411, 520 S.E.2d 899, 139 Ed. Law Rep. 703 (1999); People ex rel. Carr v. Alpha Pi of Phi Kappa Sigma Educational Ass'n of University of Chicago, 326 Ill. 573, 158 N.E. 213, 54 A.L.R. 1376 (1927); Iota Ben. Ass'n v. Douglas County, 165 Neb. 330, 85 N.W.2d 726, 66 A.L.R.2d 898 (1957); Kappa Gamma Rho v. Marion County, 130 Or. 165, 279 P. 555 (1929).
- 2 Kappa Gamma Rho v. Marion County, 130 Or. 165, 279 P. 555 (1929); Alpha Gamma Zeta House Ass'n v. Clay County Bd. of Equalization, 1998 SD 101, 583 N.W.2d 167 (S.D. 1998).
- 3 McKenzie v. Johnson, 98 Ill. 2d 87, 74 Ill. Dec. 571, 456 N.E.2d 73, 14 Ed. Law Rep. 750 (1983); Kappa Kappa Gamma House Ass'n v. Percy, 92 Kan. 1020, 142 P. 294 (1914).
- 4 Zach, Inc. v. Fulton County, 271 Ga. 411, 520 S.E.2d 899, 139 Ed. Law Rep. 703 (1999).
- 5 Alpha Rho Zeta of Lambda Chi Alpha, Inc. v. Inhabitants of City of Waterville, 477 A.2d 1131, 18 Ed. Law Rep. 648 (Me. 1984).
- 6 Zach, Inc. v. Fulton County, 271 Ga. 411, 520 S.E.2d 899, 139 Ed. Law Rep. 703 (1999).
- 7 Delta Psi Fraternity v. City of Burlington, 185 Vt. 129, 2008 VT 129, 969 A.2d 54, 244 Ed. Law Rep. 134 (2008).

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71 Am. Jur. 2d State and Local Taxation § 294

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State and Local Taxation

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§ 294. Residences for faculty and staff

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West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2349

A.L.R. Library

[Tax exemption of property of educational body as extending to property used by personnel as living quarters, 55 A.L.R.3d 485](#)

Residences for teachers erected upon or near the school grounds are frequently held to be exempt¹ although there is authority to the contrary.² In the final analysis, the exemption depends upon the particular statutory or constitutional provision involved and the facts and circumstances to which its application is invoked.³ Moreover, the occupancy of real property by an educational institution or its officers for the purposes for which it was established, in order to exempt the property from taxation, must have, or be supposed to have, a direct connection with such purposes,⁴ and dwelling houses belonging to a school and rented by teachers for their own convenience and not for the benefit of the school are not exempt.⁵

Cases are not in accord as to whether or not a dwelling house owned by a college and used by its president as a residence is exempt. Some authorities regard such a residence as taxable⁶ and others as exempt.⁷

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Footnotes

- 1 Elder v. Trustees of Atlanta University, 194 Ga. 716, 22 S.E.2d 515, 143 A.L.R. 268 (1942); President, etc., of Harvard College v. Assessors of Cambridge, 175 Mass. 145, 55 N.E. 844 (1900); Ramsey County v. Macalester College, 51 Minn. 437, 53 N.W. 704 (1892); St. Paul's School v. City of Concord, 117 N.H. 243, 372 A.2d 269 (1977); Miami Valley School v. Kinney, 69 Ohio St. 2d 134, 23 Ohio Op. 3d 173, 431 N.E.2d 335, 2 Ed. Law Rep. 840 (1982) (headmaster's residence); White v. Smith, 189 Pa. 222, 42 A. 125 (1899); Order of St. Benedict v. Gordon, 417 A.2d 881 (R.I. 1980) (provision of residences for teachers within dormitories).
- 2 Arkansas Conference Ass'n of Seventh Day Adventist, Inc. v. Benton County Bd. of Equalization, 304 Ark. 95, 800 S.W.2d 426, 64 Ed. Law Rep. 1264 (1990); University of Vt. v. Town of Essex, 129 Vt. 607, 285 A.2d 728, 55 A.L.R.3d 477 (1971).
- 3 Elder v. Trustees of Atlanta University, 194 Ga. 716, 22 S.E.2d 515, 143 A.L.R. 268 (1942); Hahn v. Walworth County, 14 Wis. 2d 147, 109 N.W.2d 653, 94 A.L.R.2d 618 (1961).
- 4 St. Ambrose University v. Board of Review for City of Davenport, 503 N.W.2d 406, 84 Ed. Law Rep. 843 (Iowa 1993); Trustees of Phillips Academy v. Inhabitants of Andover, 175 Mass. 118, 55 N.E. 841 (1900); St. Paul's School v. City of Concord, 117 N.H. 243, 372 A.2d 269 (1977).
- 5 Arkansas Conference Ass'n of Seventh Day Adventist, Inc. v. Benton County Bd. of Equalization, 304 Ark. 95, 800 S.W.2d 426, 64 Ed. Law Rep. 1264 (1990); Connolly v. County of Orange, 1 Cal. 4th 1105, 4 Cal. Rptr. 2d 857, 824 P.2d 663, 72 Ed. Law Rep. 1089 (1992), as modified, (Mar. 26, 1992); New Canaan Country School v. Town of New Canaan, 138 Conn. 347, 84 A.2d 691 (1951); Seventh Day Adventist Kansas Conference Ass'n v. Board of County Com'rs of Dickinson County, 211 Kan. 683, 508 P.2d 911 (1973); St. James Educational Institute v. City of Salem, 153 Mass. 185, 26 N.E. 636 (1891); Kappa Gamma Rho v. Marion County, 130 Or. 165, 279 P. 555 (1929).
- 6 Cook County Collector v. National College of Ed., 41 Ill. App. 3d 633, 354 N.E.2d 507 (1st Dist. 1976); Bexar Appraisal Dist. v. Incarnate Word College, 824 S.W.2d 295, 73 Ed. Law Rep. 315 (Tex. App. San Antonio 1992), writ denied, (May 6, 1992).
- 7 Kansas Wesleyan University of Salina v. Board of Com'rs of Saline County, 120 Kan. 496, 243 P. 1055 (1926); President, etc., of Harvard College v. Assessors of Cambridge, 175 Mass. 145, 55 N.E. 844 (1900).

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b. Educational and Scientific Institutions

§ 295. Scientific institutions

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West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2352

A.L.R. Library

[What is a "scientific institution" within property tax exemption provisions, 34 A.L.R.2d 1221](#)

The term "scientific institution" in tax exemption statutes has been held to include an institution giving instruction in homemaking and family care and training.¹ It has been held not to include a theosophical society,² museums,³ an engineering society,⁴ college fraternities,⁵ hospitals,⁶ or a building rented to physicians and surgeons.⁷ In a number of cases, educational institutions such as elementary schools and institutions of higher learning, in some of which it appeared that courses in science were given and in others of which it did not appear from the opinion whether or not any instruction in the sciences was given, have been classified by the courts as scientific institutions within the meaning of that term as used in tax exemption statutes.⁸ However, the teaching of "scientific" courses is, without more, insufficient to warrant a finding that an institution is a scientific institution.⁹

Footnotes

- 1 Board of Assessors of Boston v. Garland School of Home Making, 296 Mass. 378, 6 N.E.2d 374 (1937).
- 2 New England Theosophical Corp. v. City of Boston, 172 Mass. 60, 51 N.E. 456 (1898).
- 3 Kalamazoo Aviation History Museum v. City of Kalamazoo, 131 Mich. App. 709, 346 N.W.2d 862 (1984).
- 4 Engineering Soc. of Detroit v. City of Detroit, 308 Mich. 539, 14 N.W.2d 79 (1944) (holding modified on other grounds by, Wexford Medical Group v. City of Cadillac, 474 Mich. 192, 713 N.W.2d 734 (2006)).
- 5 Kappa Gamma Rho v. Marion County, 130 Or. 165, 279 P. 555 (1929).
- 6 City of Knoxville v. Ft. Sanders Hospital, 148 Tenn. 699, 257 S.W. 408 (1924).
- 7 Lois Grunow Memorial Clinic v. Oglesby, 42 Ariz. 98, 22 P.2d 1076 (1933).
- 8 District of Columbia v. Catholic Ed. Press, 199 F.2d 176, 34 A.L.R.2d 1214 (D.C. Cir. 1952); Detroit Home and Day School v. City of Detroit, 76 Mich. 521, 43 N.W. 593 (1889); St. John's Military Academy v. Edwards, 143 Wis. 551, 128 N.W. 113 (1910).
- 9 Hurricane Island Outward Bound v. Town of Vinalhaven, 372 A.2d 1043 (Me. 1977).

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c. Hospitals, Health Care Facilities, and Housing for Sick and Aged

§ 296. Hospitals, generally

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West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2343

Although, in general, it may be said that a hospital not organized for profit, and extending its benefits to the public without restriction as to members of any particular groups, is within the meaning of tax exemption statutes,¹ hospitals as such enjoy no inherent exemption from taxation, their property being taxable except so far as exempted by constitutional provision or legislative enactment.² Thus, a hospital organized and conducted as a business enterprise, from which the profits, if any, are divided among its proprietors, is not exempt even if the primary purpose of its establishment is the care and treatment of the sick.³ Under the laws of some states, nonprofit hospitals are granted tax exemptions by express statutory enactments.⁴

No single test will automatically determine when a hospital is a benevolent association; the facts of each case must be regarded as a whole, and the substance of the scheme of operation as it exists must be examined.⁵ As in the case of other charitable and benevolent institutions, the determination of whether a hospital, in a particular case, will be exempt from taxation as a charitable or benevolent institution depends, in the last analysis, upon whether the hospital is organized as a benevolent institution and whether the property on which the exemption is claimed is being devoted to benevolent purposes.⁶ Of course, in its application to hospitals, a general exemption statute is not construed with the same degree of strictness with which such a statute is normally applied.⁷

CUMULATIVE SUPPLEMENT

Cases:

Fact that bonds used to finance construction on property were validated as having a public purpose did not conclusively render hospital authority's leasehold interest in a continuing care retirement facility public property exempt from ad valorem taxation; question of whether a hospital authority's property interest qualified for ad valorem tax exemption as "public property" was a separate and distinct question from the issues presented in a bond validation proceeding. [Ga. Code Ann. § 48-5-41\(a\) \(1\) \(A\)](#). [Columbus Board of Tax Assessors v. Medical Center Hospital Authority](#), 806 S.E.2d 525 (Ga. 2017).

If a hospital that receives charitable purpose property tax exemption owns other property, that other property does not automatically receive a charitable purposes exemption. [Ind. Code Ann. § 6-1.1-10-16](#). [St. Mary's Building Corporation v. Redman](#), 135 N.E.3d 681 (Ind. Tax Ct. 2019).

Statute exempting from property taxation all or part of buildings owned, occupied, and used for charitable purposes did not apply to exempt portions of taxpayer's building leased to tenants who operated breast imaging and therapy center, primary care physician's office, and urgent care and imaging and laboratory center; although taxpayer argued that it was a non-profit corporation, it did not demonstrate how building was used to relieve human want through charitable acts different from everyday purposes and to confer public benefit sufficient to justify loss of tax revenue, and while taxpayer pointed to data indicating that it had provided over \$11 million in uncompensated care, majority was attributable to bad debt and unreimbursed Medicare/Medicaid costs. [Ind. Code Ann. § 6-1.1-10-16\(a\)](#). [St. Mary's Building Corporation v. Redman](#), 135 N.E.3d 681 (Ind. Tax Ct. 2019).

Borough could not impose assessments on hospital property, which had been exempt from taxation as a nonprofit organization, for two prior tax years based on unrelated decision in which Tax Court had denied exemption to another hospital; borough was required to demonstrate change in use as a condition precedent for exemption to cease. [N.J. Stat. Ann. § 54:4-63.26](#). [Borough of Red Bank v. RMC-Meridian Health](#), 30 N.J. Tax 551, 2018 WL 3584609 (2018).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Missouri Pac. Hospital Ass'n v. Pulaski County](#), 211 Ark. 9, 199 S.W.2d 329 (1947); [City of Dayton v. Trustees of Speers Hospital](#), 165 Ky. 56, 176 S.W. 361 (1915); [Corporation of Sisters of Mercy v. Lane County](#), 123 Or. 144, 261 P. 694 (1927).
- 2 [Missouri Pac. Hospital Ass'n v. Pulaski County](#), 211 Ark. 9, 199 S.W.2d 329 (1947); [Board of County Com'rs of Chaffee County v. Denver & R.G.R. Co. Employees' Relief Ass'n](#), 70 Colo. 592, 203 P. 850, 22 A.L.R. 902 (1922); [Corporation of Sisters of Mercy v. Lane County](#), 123 Or. 144, 261 P. 694 (1927).
- 3 [Bistline v. Bassett](#), 47 Idaho 66, 272 P. 696, 62 A.L.R. 323 (1928).
- 4 [Mingledorff v. Vaughan Regional Medical Center, Inc.](#), 682 So. 2d 415 (Ala. 1996); [Greater Anchorage Area Borough v. Sisters of Charity of House of Providence](#), 553 P.2d 467 (Alaska 1976); [Appeal of Evangelical Lutheran Good Samaritan Soc. \(Good Samaritan Village\)](#), 119 Idaho 126, 804 P.2d 299 (1990); [State Dept. of Assessments and Taxation v. North Baltimore Center, Inc.](#), 129 Md. App. 588, 743 A.2d 759 (2000), judgment aff'd, 361 Md. 612, 762 A.2d 564 (2000); [Chisago Health Services v. Commissioner of Revenue](#), 462 N.W.2d 386 (Minn. 1990); [Department of Revenue of State of Mont. v. Gallatin Outpatient Clinic, Inc., Ins. Co.](#), 234 Mont. 425, 763 P.2d 1128 (1988); [Corporation of Sisters of Mercy v. Lane County](#), 123 Or. 144, 261 P. 694 (1927); [Wilson Area School Dist. v. Easton Hosp.](#), 561 Pa. 1, 747 A.2d 877 (2000); [Utah County By and Through County Bd. of Equalization of Utah County v. Intermountain Health Care, Inc.](#), 725

- P.2d 1357 (Utah 1986); *Medical Center Hosp. of Vermont, Inc. v. City of Burlington*, 152 Vt. 611, 566 A.2d 1352 (1989); *Smyth County Community Hosp. v. Town of Marion*, 259 Va. 328, 527 S.E.2d 401 (2000); *Sisters of St. Mary v. City of Madison*, 89 Wis. 2d 372, 278 N.W.2d 814 (1979).
- 5 *Prairie du Chien Sanitarium Co. v. City of Prairie du Chien*, 242 Wis. 262, 7 N.W.2d 832, 144 A.L.R. 1480 (1943).
- 6 *Missouri Pac. Hospital Ass'n v. Pulaski County*, 211 Ark. 9, 199 S.W.2d 329 (1947); *In re Farmers' Union Hosp. Ass'n of Elk City*, 1942 OK 128, 190 Okla. 661, 126 P.2d 244 (1942); *Howell v. County Bd. of Cache County ex rel. IHC Hospitals, Inc.*, 881 P.2d 880 (Utah 1994); *Rogers Memorial Sanitarium v. Town of Summit*, 228 Wis. 507, 279 N.W. 623 (1938).
- 7 *Board of Sup'rs of Wythe County v. Medical Group Foundation, Inc.*, 204 Va. 807, 134 S.E.2d 258 (1964).

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§ 297. Facilities included in express exemption for hospitals

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West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2343

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[Exemption from real-property taxation of residential facilities maintained by hospital for patients, staff, or others, 61 A.L.R.4th 1105](#)

A hospital or health care facility, under some statutes, is limited to a facility that cares for and treats the sick and injured.¹ It does not include a fitness or wellness center,² an outpatient facility,³ or housing for the elderly who are ambulatory and independent.⁴

The exemption for hospitals applies to any property devoted to and reasonably necessary for the accomplishment of hospital purposes.⁵ Under this analysis, a nursing home affiliated with a hospital;⁶ the residence of a hospital chaplain;⁷ a lodging facility owned and maintained by a public hospital for preadmission patients, outpatients, and family members of patients;⁸ sleeping quarters for hospital staff;⁹ and properties owned by a nonprofit hospital and used exclusively to house hospital personnel at minimal or lower rent¹⁰ have been held exempt. However, an independent nursing home,¹¹ and even a nursing home affiliated

with a hospital, which was not run on a charitable basis;¹² a hospital-owned building which was rented out as offices of doctors affiliated with the hospital;¹³ and a building rented out to private doctors and dentists¹⁴ have been determined to be taxable or at least not exempt as hospitals. It has also been held, however, that a building which is owned by a hospital and used by doctors for offices,¹⁵ even when leased out,¹⁶ was directly related to the operation of the hospital and thus exempt.

Proximity to a hospital was considered irrelevant when considering whether an off-site outpatient clinic qualified as a doctor's office as would prevent it from qualifying for a property tax exemption for property used exclusively for the purposes of a hospital.¹⁷

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Footnotes

- 1 [Appeal of Sioux Valley Hosp. Ass'n, 513 N.W.2d 562 \(S.D. 1994\).](#)
- 2 [Appeal of Sioux Valley Hosp. Ass'n, 513 N.W.2d 562 \(S.D. 1994\).](#)
- 3 [Chisago Health Services v. Commissioner of Revenue, 462 N.W.2d 386 \(Minn. 1990\); Department of Revenue of State of Mont. v. Gallatin Outpatient Clinic, Inc., Ins. Co., 234 Mont. 425, 763 P.2d 1128 \(1988\).](#)
- 4 [Appeal of Evangelical Lutheran Good Samaritan Soc. \(Good Samaritan Village\), 119 Idaho 126, 804 P.2d 299 \(1990\); Dublin City School Dist. Bd. of Edn. v. Tracy, 126 Ohio App. 3d 603, 710 N.E.2d 1199 \(10th Dist. Franklin County 1998\) \(even though facility owned by hospital\).](#)
- 5 [Chisago Health Services v. Commissioner of Revenue, 462 N.W.2d 386 \(Minn. 1990\) \(outpatient facility not reasonably necessary\); Smyth County Community Hosp. v. Town of Marion, 259 Va. 328, 527 S.E.2d 401 \(2000\); Sisters of St. Mary v. City of Madison, 89 Wis. 2d 372, 278 N.W.2d 814 \(1979\).](#)
- 6 [Smyth County Community Hosp. v. Town of Marion, 259 Va. 328, 527 S.E.2d 401 \(2000\).](#)
- 7 [Sisters of St. Mary v. City of Madison, 89 Wis. 2d 372, 278 N.W.2d 814 \(1979\).](#)
- 8 [Abbott-Northwestern Hosp., Inc. v. Hennepin County, 389 N.W.2d 916, 61 A.L.R.4th 1099 \(Minn. 1986\).](#)
- 9 [Medical Center Hosp. of Vermont, Inc. v. City of Burlington, 152 Vt. 611, 566 A.2d 1352 \(1989\).](#)
- 10 [Perth Amboy General Hospital v. City of Perth Amboy, 176 N.J. Super. 307, 422 A.2d 1331 \(App. Div. 1980\); St. Joseph's Health Center Properties, Inc. v. Srogi, 51 N.Y.2d 127, 432 N.Y.S.2d 865, 412 N.E.2d 921 \(1980\).](#)
- 11 [Central Vermont Hosp., Inc. v. Town of Berlin, 164 Vt. 456, 672 A.2d 474 \(1995\).](#)
- 12 [Iowa Methodist Hospital v. Board of Review of City of Des Moines, 252 N.W.2d 390 \(Iowa 1977\).](#)
- 13 [White Cross Hospital Assn. v. Board of Tax Appeals, 38 Ohio St. 2d 199, 67 Ohio Op. 2d 224, 311 N.E.2d 862 \(1974\); Grand Prairie Hosp. Authority v. Dallas County Appraisal Dist., 730 S.W.2d 849 \(Tex. App. Dallas 1987\), writ refused n.r.e., \(Oct. 28, 1987\).](#)
- 14 [Underhill v. Edwards, 400 So. 2d 129 \(Fla. 5th DCA 1981\); St. Mary's Medical Center of Evansville, Inc. v. State Bd. of Tax Com'rs, 571 N.E.2d 1247 \(Ind. 1991\).](#)
- 15 [School Dist. of Philadelphia, Bd. of Educ. v. Council of City of Philadelphia, 129 Pa. Commw. 503, 566 A.2d 352, 57 Ed. Law Rep. 185 \(1989\).](#)
- 16 [Hotel Dieu v. Williams, 410 So. 2d 1111 \(La. 1982\).](#)
- 17 [Covenant Healthcare System, Inc. v. City of Wauwatosa, 2011 WI 80, 336 Wis. 2d 522, 800 N.W.2d 906 \(2011\).](#)

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§ 298. Effect of imposition of charges, fees, or like on patients

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West's Key Number Digest

West's Key Number Digest, [Taxation](#) 2343

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[Receipt of pay from beneficiaries as affecting tax exemption of charitable institutions, 37 A.L.R.3d 1191](#)

Where an exempting statute specifically covers hospitals conducted exclusively as "charities"—hospital being defined as including hospitals operated by nonstock corporations not organized or conducted for pecuniary profit but which may charge persons able to pay in whole or in part for their care and treatment—the receipt of pay from patients does not negate a tax exemption.¹ While there is authority to the contrary,² in recognition of the contemporary hospital practice of charging patients who are able to pay for the services rendered them in order to maintain the institution, pay off the indebtedness on its buildings, expand its facilities, or improve its services, while not denying treatment and care to patients who are unable to pay, in many cases, even though paying patients vastly outnumber charity patients and their payments constitute the main source of a hospital's income, such receipts have been held not to cause the loss of the institution's charitable character and consequent tax exemption.³ However, it has been recognized that a hospital which admits paying patients in such numbers as to exhaust its accommodations and prevent the admission of charity patients may lose its tax exemption as a charitable institution.⁴ Additionally, although a

charitable exemption has been denied a hospital which received no charity patients,⁵ an opposite result has been reached with regard to a hospital which, although it followed such a policy, nonetheless never dismissed a patient because he or she did not pay as promised.⁶ The key question is whether health care was made available by the hospital to all who needed it regardless of their ability to pay.⁷ The fact that a hospital may be operated at a loss does not bring it within a statute exempting from taxation hospitals used for benevolent purposes from which no profit is derived if the dominant and substantial use is pecuniary advantage to those who have it under their management and control.⁸

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Footnotes

- 1 [Mingledorff v. Vaughan Regional Medical Center, Inc.](#), 682 So. 2d 415 (Ala. 1996); [Miller County v. Opportunities, Inc.](#), 334 Ark. 88, 971 S.W.2d 781 (1998); [West Allegheny Hosp. v. Board of Property Assessment, Appeals and Review of Allegheny County](#), 500 Pa. 236, 455 A.2d 1170 (1982); [Memorial Hospital Ass'n of Va., Inc. v. Wise County](#), 203 Va. 303, 124 S.E.2d 216 (1962).
- 2 [Sutter Hospital of Sacramento v. City of Sacramento](#), 39 Cal. 2d 33, 244 P.2d 390 (1952); [Salisbury Hospital v. Rowan County](#), 205 N.C. 8, 169 S.E. 805 (1933); [Oklahoma Tax Commission v. Sisters of the Sorrowful Mother](#), 1939 OK 539, 186 Okla. 339, 97 P.2d 888 (1939).
- 3 [Mingledorff v. Vaughan Regional Medical Center, Inc.](#), 682 So. 2d 415 (Ala. 1996); [Hungerford Convalescent Hospital Ass'n v. Osborn](#), 150 So. 2d 230 (Fla. 1963); [Harvard Community Health Plan, Inc. v. Board of Assessors of Cambridge](#), 384 Mass. 536, 427 N.E.2d 1159 (1981); [Gundry v. R.B. Smith Memorial Hospital Ass'n](#), 293 Mich. 36, 291 N.W. 213 (1940); [Board of Sup'rs of Hinds County v. Jackson Hospital Benev. Ass'n](#), 180 Miss. 129, 177 So. 27 (1937); [Community Memorial Hospital v. City of Moberly](#), 422 S.W.2d 290 (Mo. 1967); [Lamb County Appraisal Dist. v. South Plains Hospital-Clinic, Inc.](#), 688 S.W.2d 896 (Tex. App. Amarillo 1985), writ refused n.r.e., (Jan. 22, 1986); [Medical Center Hosp. of Vermont, Inc. v. City of Burlington](#), 152 Vt. 611, 566 A.2d 1352 (1989); [In re Rust's Estate](#), 168 Wash. 344, 12 P.2d 396 (1932).
- 4 [Community Memorial Hospital v. City of Moberly](#), 422 S.W.2d 290 (Mo. 1967); [O'Brien v. Physicians' Hospital Ass'n](#), 96 Ohio St. 1, 116 N.E. 975 (1917).
The operation of a dialysis clinic by a nonprofit health care provider did not qualify as an exclusively charitable use of the property under the charitable-purpose tax exemption where the provider charged all patients at that site for the services they received, its donation of surplus revenues to kidney research did not establish its core activity as charitable, and it reserved the right in its indigency policy to refuse to treat a patient with no ability to pay. [Dialysis Clinic, Inc. v. Levin](#), 127 Ohio St. 3d 215, 2010-Ohio-5071, 938 N.E.2d 329 (2010).
- 5 [Prairie du Chien Sanitarium Co. v. City of Prairie du Chien](#), 242 Wis. 262, 7 N.W.2d 832, 144 A.L.R. 1480 (1943).
- 6 [Brattleboro Retreat v. Town of Brattleboro](#), 106 Vt. 228, 173 A. 209 (1934).
- 7 [Miller County v. Opportunities, Inc.](#), 334 Ark. 88, 971 S.W.2d 781 (1998); [Lutheran General Health Care System v. Department of Revenue](#), 231 Ill. App. 3d 652, 172 Ill. Dec. 544, 595 N.E.2d 1214 (1st Dist. 1992); [Appeal of Doctor's Hospital](#), 51 Pa. Commw. 31, 414 A.2d 134 (1980); [Lamb County Appraisal Dist. v. South Plains Hospital-Clinic, Inc.](#), 688 S.W.2d 896 (Tex. App. Amarillo 1985), writ refused n.r.e., (Jan. 22, 1986); [Medical Center Hosp. of Vermont, Inc. v. City of Burlington](#), 152 Vt. 611, 566 A.2d 1352 (1989).
- 8 [Bistline v. Bassett](#), 47 Idaho 66, 272 P. 696, 62 A.L.R. 323 (1928).

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§ 299. Hospital service corporation

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West's Key Number Digest, [Taxation](#)  2343

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[Receipt of pay from beneficiaries as affecting tax exemption of charitable institutions, 37 A.L.R.3d 1191](#)

[Tax exemption of Blue Cross, Blue Shield, or other hospital or medical service corporation, 88 A.L.R.2d 1414](#)

A nonprofit hospital service corporation acting as agent for charitable hospitals in selling contracts which entitle the subscribers to hospitalization, and holding any surplus as a reserve for the subscribers' benefit, has been held a "benevolent institution" within a statute exempting the funds and property of such institutions from taxation.¹

In some cases, a hospital service corporation has been held exempt from taxation despite payment obligations of its subscribers² while in others, a reverse result has been reached.³ A health maintenance organization can be considered a charitable health organization if the people who benefit from it are of a sufficiently large or indefinite class that the community at large is benefited.⁴

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Footnotes

- 1 Cleveland Hospital Service Ass'n v. Ebright, 142 Ohio St. 51, 26 Ohio Op. 250, 49 N.E.2d 929 (1943); Associated Hospital Service, Inc. v. City of Milwaukee, 13 Wis. 2d 447, 109 N.W.2d 271, 88 A.L.R.2d 1395 (1961).
- 2 Harvard Community Health Plan, Inc. v. Board of Assessors of Cambridge, 384 Mass. 536, 427 N.E.2d 1159 (1981); Associated Hospital Service, Inc. v. City of Milwaukee, 13 Wis. 2d 447, 109 N.W.2d 271, 88 A.L.R.2d 1395 (1961).
- 3 United Hospitals Service Ass'n v. Fulton County, 216 Ga. 30, 114 S.E.2d 524 (1960).
- 4 Harvard Community Health Plan, Inc. v. Board of Assessors of Cambridge, 384 Mass. 536, 427 N.E.2d 1159 (1981).

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§ 300. Nursing homes

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[Nursing homes as exempt from property taxation, 34 A.L.R.5th 529](#)

It has been said that institutions generally referred to as nursing homes are in large measure analogous to hospitals; that while hospitals are employed in the treatment of individuals of all ages who become ill, and also supply facilities for surgery, nursing homes do not have surgical facilities and do not provide care for the young, their services being limited to a large extent to the aged, the infirm, and individuals who are mentally subnormal; but that they provide the same care that hospitals furnish to patients convalescing from surgery or being treated for illness not requiring surgery.¹ In any event, the trend indicated by many of the recent cases is that the charging of fees to residents of nursing homes will not, irrespective of other factors, necessarily require a disallowance of an exemption from property taxation.² For that matter, the question whether a particular nursing home is exempt from taxation is decided on a case-by-case basis, with inquiries being made into the specific phraseology of the constitutional or statutory tax exemption provision applicable, the character and purpose of the home, and the facts surrounding its use. Specifically, the courts in a number of particular cases have allowed or denied the exemption of nursing homes from

property taxation under provisions requiring "exclusive" use or organization for charitable and similar purposes,³ or exempting property of institutions of "purely public charity,"⁴ or property owned and occupied for charitable purposes,⁵ as well as under other provisions.⁶ The courts have also examined whether the nursing home will admit people regardless of ability to pay⁷ and whether it provides adequate other community services.⁸

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Footnotes

- 1 [Bethesda Foundation v. Saunders County](#), 200 Neb. 574, 264 N.W.2d 664 (1978).
- 2 [Stanbro v. Baptist Home Ass'n of Colo. for Aged](#), 172 Colo. 572, 475 P.2d 23, 45 A.L.R.3d 606 (1970); [Fairview Haven v. Department of Revenue](#), 153 Ill. App. 3d 763, 106 Ill. Dec. 634, 506 N.E.2d 341 (4th Dist. 1987); [Bethesda Foundation v. Saunders County](#), 200 Neb. 574, 264 N.W.2d 664 (1978); [Presbyterian Homes of Synod of N. J. v. Division of Tax Appeals](#), 55 N.J. 275, 261 A.2d 143, 37 A.L.R.3d 1181 (1970); [In re Dana W. Morey Foundation](#), 21 Ohio App. 2d 230, 50 Ohio Op. 2d 377, 256 N.E.2d 232 (3d Dist. Union County 1970); [St. Margaret Seneca Place v. Board of Property Assessment Appeals and Review](#), County of Allegheny, 536 Pa. 478, 640 A.2d 380, 34 A.L.R.5th 845 (1994); [City of McAllen v. Evangelical Lutheran Good Samaritan Society](#), 530 S.W.2d 806 (Tex. 1975).
- 3 [Stanbro v. Baptist Home Ass'n of Colo. for Aged](#), 172 Colo. 572, 475 P.2d 23, 45 A.L.R.3d 606 (1970) (exemption allowed); [Presbyterian Homes of Synod of N. J. v. Division of Tax Appeals](#), 55 N.J. 275, 261 A.2d 143, 37 A.L.R.3d 1181 (1970) (exemption not allowed).
- 4 [Central Bd. on Care of Jewish Aged, Inc. v. Henson](#), 120 Ga. App. 627, 171 S.E.2d 747 (1969) (exemption allowed); [St. Margaret Seneca Place v. Board of Property Assessment Appeals and Review](#), County of Allegheny, 536 Pa. 478, 640 A.2d 380, 34 A.L.R.5th 845 (1994) (exemption allowed); [City of McAllen v. Ev. Lutheran Good Samaritan Soc.](#), 518 S.W.2d 557 (Tex. Civ. App. Corpus Christi 1975), writ granted, (June 4, 1975) and judgment aff'd, 530 S.W.2d 806 (Tex. 1975) (exemption allowed).
- 5 [Hungerford Convalescent Hospital Ass'n v. Osborn](#), 150 So. 2d 230 (Fla. 1963) (exemption allowed); [Good Samaritan Home of Quincy v. Illinois Dept. of Revenue](#), 130 Ill. App. 3d 1036, 86 Ill. Dec. 190, 474 N.E.2d 1387 (4th Dist. 1985) (exemption not allowed); [New England Sanitarium v. Inhabitants of Stoneham](#), 205 Mass. 335, 91 N.E. 385 (1910) (exemption allowed); [Mark H. Wentworth Home v. City of Portsmouth](#), 108 N.H. 514, 238 A.2d 730 (1968) (exemption not allowed); [Retirement Ranch, Inc. v. Curry County Valuation Protest Bd.](#), 89 N.M. 42, 546 P.2d 1199 (Ct. App. 1976) (exemption allowed).
- 6 [Ruston Hospital, Inc. v. Riser](#), 191 So. 2d 665 (La. Ct. App. 2d Cir. 1966).
- 7 [Iowa Methodist Hospital v. Board of Review of City of Des Moines](#), 252 N.W.2d 390 (Iowa 1977); [Village North, Inc. v. State Tax Com'n of Missouri](#), 799 S.W.2d 197 (Mo. Ct. App. E.D. 1990); [Couriers-Susquehanna, Inc. v. County of Dauphin](#), 165 Pa. Commw. 192, 645 A.2d 290 (1994); [City of McAllen v. Evangelical Lutheran Good Samaritan Society](#), 530 S.W.2d 806 (Tex. 1975); [Family Hospital Nursing Home, Inc. v. City of Milwaukee](#), 78 Wis. 2d 312, 254 N.W.2d 268 (1977).
A taxpayer, an operator of two continuing care retirement communities, did not donate or render gratuitously a substantial portion of its services, and thus, the taxpayer was not a purely public charity entitled to a real estate tax exemption for its skilled nursing facilities where the taxpayer charged a hefty entrance fee and was caring for Medicaid-eligible residents that came from within its community because of an obligation to do so rather than a sense of charity or out of a bona fide effort to service those that could not afford the per diem rate, and the taxpayer only accepted a small percentage of Day One Medicaid-eligible individuals from outside its community. [Menno Haven, Inc. v. Franklin County Bd. of Assessment and Revision of Taxes](#), 919 A.2d 333 (Pa. Commw. Ct. 2007).
- 8 [Care Initiatives v. Board of Review of Union County, Iowa](#), 500 N.W.2d 14 (Iowa 1993).

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§ 301. Homes for aged

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[Receipt of pay from beneficiaries as affecting tax exemption of charitable institutions, 37 A.L.R.3d 1191](#)

[Homes for the aged as exempt from property taxation, 37 A.L.R.3d 565](#)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 93](#) (Complaint, petition, or declaration—To recover payment of taxes on property of home for aged persons)

The provision of food, shelter, health care, and other services to enable aged persons to live independently serves a charitable purpose under certain circumstances.¹ It is recognized that the provision of low-cost housing to the elderly with limited incomes constitutes a public charity.² The question of whether a particular home for the aged is exempt from taxation has been decided on a case-by-case basis, with inquiries being made into the specific phraseology of the constitutional or statutory tax exemption provision applicable, the character and purpose of the home, and the facts surrounding its use. However, in their determinations of the exemption issues, the courts have often been influenced by certain persuasive factors although no single factor has been found to be universally decisive. For example, cases denying, as well as those sustaining, exemptions have turned on such factors as the imposition of substantial fees³ or stringent health requirements⁴ upon applicants for admission to the institutions under review or the high quality of accommodations and services provided the residents thereof.⁵ Other cases have turned upon the factor, among others, that the institution in question restricted admission to members of a particular class,⁶ particularly limiting beneficiaries to those with a demonstrated ability to pay,⁷ or that the property for which exemption was sought was leased out rather than used in the operation of the institution as such⁸ or, in some of the cases wherein the home was operated by an incorporated organization, upon provisions enumerating the corporate powers as found in the corporate charters.⁹ A home for the aged did not qualify as a charity where it was primarily supported by government subsidies and rent paid by the residents¹⁰ although the receipt of government subsidies has also been determined to have no impact on a retirement home's charitable status.¹¹ An independent living facility for the elderly was denied charitable status where it provided no care for the elderly other than an attractive residence for functionally independent elderly persons.¹²

CUMULATIVE SUPPLEMENT

Cases:

In determining whether a facility used for housing the elderly qualifies for a property tax exemption by virtue of being charitable, consideration is given to whether the facility retains the ability to terminate a resident's lease for nonpayment, whether residents are charged for supplemental services, and the number of residents who are dependent on government benefits. [McKinney's RPTL § 420–a. Church Aid of Protestant Episcopal Church in Town of Saratoga Springs, Inc. v. Town of Malta Assessor, 125 A.D.3d 1218, 2015 WL 790355 \(3d Dep't 2015\).](#)

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Footnotes

- 1 [Matter of Tax Appeal of Central Union Church—Arcadia Retirement Residence, 63 Haw. 199, 624 P.2d 1346 \(1981\); Appeal of Evangelical Lutheran Good Samaritan Soc. \(Good Samaritan Village\), 119 Idaho 126, 804 P.2d 299 \(1990\); Appeal of City of Franklin, 137 N.H. 622, 631 A.2d 537 \(1993\); State By and Through Pierotti ex rel. Boone v. Sundquist, 884 S.W.2d 438 \(Tenn. 1994\).](#)
- 2 [Monroe v. Baptist Health Care Foundation, 772 So. 2d 414 \(Ala. 2000\); Banahan v. Presbyterian Housing Corp., 553 S.W.2d 48 \(Ky. 1977\); G.D.L. Plaza Corp. v. Council Rock School Dist., 515 Pa. 54, 526 A.2d 1173, 39 Ed. Law Rep. 1161 \(1987\).](#)
- 3 [United Presbyterian Ass'n v. Board of County Com'rs of Jefferson County, 167 Colo. 485, 448 P.2d 967 \(1968\) \(exemption denied\); United Church of Christ v. Town of West Hartford, 206 Conn. 711, 539 A.2d 573 \(1988\) \(overruled on other grounds by, \[St. Joseph's Living Center, Inc. v. Town of Windham, 290 Conn. 695, 966 A.2d 188 \\(2009\\)\]\(#\)\) \(exemption denied\); Appeal of Evangelical Lutheran Good Samaritan Soc. \(Good Samaritan Village\), 119 Idaho 126, 804 P.2d 299 \(1990\) \(rates comparable to market rates, exemption denied\); \[Small v. Pangle, 60 Ill. 2d 510, 328 N.E.2d 285 \\(1975\\)\]\(#\) \(exemption denied\); \[Dow City\]\(#\)](#)

- Sr. Citizens Housing, Inc. v. Board of Review of Crawford County, 230 N.W.2d 497 (Iowa 1975) (exemption denied); South Iowa Methodist Homes, Inc. v. Board of Review of City of Des Moines, 173 N.W.2d 526 (Iowa 1970) (exemption sustained); Retirement Homes of Detroit Annual Conference of United Methodist Church, Inc. v. Sylvan Tp., Washtenaw County, 416 Mich. 340, 330 N.W.2d 682 (1982) (exemption denied); Hattiesburg Area Senior Services, Inc. v. Lamar County, 633 So. 2d 440 (Miss. 1994) (exemption denied); Evangelical Retirement Homes of Greater St. Louis, Inc. v. State Tax Com'n of Missouri, 669 S.W.2d 548 (Mo. 1984) (exemption denied); Matter of Barham, 70 N.C. App. 236, 319 S.E.2d 657 (1984) (exemption denied); Toledo Jewish Home for the Aged, Inc. v. Limbach, 53 Ohio St. 3d 52, 559 N.E.2d 451 (1990) (exemption denied); G.D.L. Plaza Corp. v. Council Rock School Dist., 515 Pa. 54, 526 A.2d 1173, 39 Ed. Law Rep. 1161 (1987) (market rates, exemption denied); Appeal of Marple Newtown School Dist., 500 Pa. 160, 455 A.2d 98 (1982) (exemption denied).
- 4 Appeal of Sunny Ridge Manor, Inc., 106 Idaho 98, 675 P.2d 813 (1984) (exemption denied); People ex rel. Nordlund v. Association of Winnebago Home for Aged, 40 Ill. 2d 91, 237 N.E.2d 533 (1968) (exemption denied); Retirement Homes of Detroit Annual Conference of United Methodist Church, Inc. v. Sylvan Tp., Washtenaw County, 416 Mich. 340, 330 N.W.2d 682 (1982) (exemption denied); Madonna Towers v. Commissioner of Taxation, 283 Minn. 111, 167 N.W.2d 712 (1969) (exemption denied); Better Living Services, Inc. v. Bolivar County, 587 So. 2d 914 (Miss. 1991) (exemption denied); Oregon Methodist Homes, Inc. v. Horn, 226 Or. 298, 360 P.2d 293 (1961) (exemption denied); Appeal of Marple Newtown School Dist., 500 Pa. 160, 455 A.2d 98 (1982) (exemption denied).
- 5 Fredericka Home for the Aged v. San Diego County, 35 Cal. 2d 789, 221 P.2d 68 (1950) (exemption sustained); Bozeman Deaconess Foundation v. Ford, 151 Mont. 143, 439 P.2d 915, 37 A.L.R.3d 558 (1968) (exemption sustained); Milwaukee Protestant Home for the Aged v. City of Milwaukee, 41 Wis. 2d 284, 164 N.W.2d 289 (1969) (exemption sustained).
- 6 Hanagan v. Grand Lodge, K. P. of Domain of Colorado, 102 Colo. 277, 80 P.2d 328 (1938) (exemption sustained); American-Russian Aid Ass'n v. City of Glen Cove, 41 Misc. 2d 622, 246 N.Y.S.2d 123 (Sup 1964), judgment aff'd, 23 A.D.2d 966, 260 N.Y.S.2d 589 (2d Dep't 1965) (exemption sustained); Baptist Health Care Corp. v. Okmulgee County Bd. of Equalization, 1988 OK 11, 750 P.2d 127 (Okla. 1988); City of Philadelphia v. Masonic Home of Pennsylvania, 160 Pa. 572, 28 A. 954 (1894) (exemption denied).
- 7 Miller County v. Opportunities, Inc., 334 Ark. 88, 971 S.W.2d 781 (1998) (exemption denied); Matter of Tax Appeal of Central Union Church—Arcadia Retirement Residence, 63 Haw. 199, 624 P.2d 1346 (1981) (exemption sustained); Dow City Sr. Citizens Housing, Inc. v. Board of Review of Crawford County, 230 N.W.2d 497 (Iowa 1975) (exemption denied); Hattiesburg Area Senior Services, Inc. v. Lamar County, 633 So. 2d 440 (Miss. 1994) (exemption denied); Evangelical Retirement Homes of Greater St. Louis, Inc. v. State Tax Com'n of Missouri, 669 S.W.2d 548 (Mo. 1984) (exemption denied); Appeal of Marple Newtown School Dist., 500 Pa. 160, 455 A.2d 98 (1982) (exemption denied); Yorgason v. County Bd. of Equalization of Salt Lake County ex rel. Episcopal Management Corp., 714 P.2d 653 (Utah 1986) (exemption sustained); City of Richmond v. Virginia United Methodist Homes, Inc., 257 Va. 146, 509 S.E.2d 504 (1999) (exemption denied).
- 8 Peachtree on Peachtree Inn, Inc. v. Camp, 120 Ga. App. 403, 170 S.E.2d 709 (1969) (exemption denied); People ex rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136, 143 N.E. 414, 34 A.L.R. 628 (1924) (exemption denied); Baptist Health Care Corp. v. Okmulgee County Bd. of Equalization, 1988 OK 11, 750 P.2d 127 (Okla. 1988).
- 9 Electra Arms Apartment & Medical Center Foundation, Inc. v. City of Wilmington, 254 A.2d 244 (Del. 1969) (exemption sustained); Presbyterian Homes of Synod of N. J. v. Division of Tax Appeals, 55 N.J. 275, 261 A.2d 143, 37 A.L.R.3d 1181 (1970) (exemption denied).
- 10 Better Living Services, Inc. v. Bolivar County, 587 So. 2d 914 (Miss. 1991); Advanced Living, Inc. v. Montgomery County Bd. of Assessment Appeals, 113 Pa. Commw. 514, 537 A.2d 948 (1988); Yakima First Baptist Homes, Inc. v. Gray, 82 Wash. 2d 295, 510 P.2d 243 (1973).
- 11 Pentecostal Church of God v. Hughlett, 737 S.W.2d 728 (Mo. 1987).
- 12 Riverview Place, Inc. v. Cass County By and Through Cass County Bd. of Com'rs, 448 N.W.2d 635 (N.D. 1989); Toledo Jewish Home for the Aged, Inc. v. Limbach, 53 Ohio St. 3d 52, 559 N.E.2d 451 (1990).

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§ 302. Homes for aged—Effect of particular constitutional or statutory provisions

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[Receipt of pay from beneficiaries as affecting tax exemption of charitable institutions, 37 A.L.R.3d 1191](#)

[Homes for the aged as exempt from property taxation, 37 A.L.R.3d 565](#)

Cases involving the tax-exempt status of homes for the aged have, for the most part, arisen under one of two particular types of constitutional or statutory provisions: the first type expressly exempts from taxation property of homes for the aged which meet certain criteria;¹ the second type exempts from taxation, in general terms, property of religious, charitable, and similar organizations when used for purposes for which the organizations were established.² The validity of statutes of the express type has been sustained on the ground that they are within the mandate of certain constitutional provisions which restrict tax exemption to property used exclusively for charitable purposes³ or which deal with the establishment of religion or state aid to religious institutions.⁴ Regarding the application of statutes which expressly provide for the exemption of property of old people's homes which are actually used for charitable purposes, some courts have denied such an exemption to homes which imposed upon applicants for admission sizable fees as well as stringent health requirements, reasoning that such use of these

homes did not meet the judicially imposed requirements for exemption of service to an indefinite number of people without restriction and general compliance with charitable objectives.⁵ On the other hand, certain courts have applied such express statutes to exempt from taxation property of homes restricted to aged persons able to pay for their accommodations, these courts emphasizing that any profit derived from operations would be used for the benefit of residents of the homes and not for private enrichment.⁶

While there is considerable variance in the precise phraseology of constitutional or statutory provisions which exempt generally property of charitable, benevolent, religious, or similar institutions, exemptions thereunder have frequently been denied to the property of homes which generally limited admissions to aged persons able and willing to pay for their accommodations. The reasoning in such cases at times has emphasized that the fees charged weighed heavily against a finding that the properties were used for charitable as opposed to commercial or business purposes;⁷ that the residents of such homes were the principal beneficiaries rather than society in general, so that such homes did not relieve society of the responsibility for persons in need;⁸ or that the operation of the homes was substantially the same as the operation of private, commercial convalescent homes not exempt from taxation.⁹

On the other hand, out of a recognition that the scope of charity and the standards under which it is administered are not frozen by the past, but keep pace with the times and the new conditions and warrants of society, it has been held that in spite of substantial fees charged to residents of homes for the aged, a general statutory exemption would nonetheless be applicable.¹⁰ Moreover, the fact that the policy of a home restricted admissions not only to aged persons able to pay for their accommodations but also to members of a particular class of persons has not been held to necessitate a denial of an exemption of the property of such home.¹¹

CUMULATIVE SUPPLEMENT

Cases:

Continuing care retirement community did not create any substantial public benefit, and, thus, was not entitled to either constitutional or statutory charitable property tax exemptions, even if statute did not impose any eligibility threshold for amount of services donated by a continuing care community, since constitutional exemption required substantial public benefit, community was self-sustaining, in that it only accepted and benefited financially and medically screened residents based on requirements calculated in interests of financial security for community, and to be eligible for statutory exemption, community could not simply be a continuing care facility, rather it had to satisfy requirements for constitutional exemption. *N.M. Const. art. 8, § 3*; *N.M. Stat. Ann. § 7-36-7(B)(1)(d)*. *El Castillo Retirement Residences v. Martinez*, 2017-NMSC-026, 401 P.3d 751 (N.M. 2017).

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Footnotes

- 1 [In re Applications of Kansas Christian Home](#), 268 Kan. 859, 2 P.3d 168 (2000); [Toledo Jewish Home for the Aged, Inc. v. Limbach](#), 53 Ohio St. 3d 52, 559 N.E.2d 451 (1990).
- 2 [United Presbyterian Ass'n v. Board of County Com'rs of Jefferson County](#), 167 Colo. 485, 448 P.2d 967 (1968); [United Church of Christ v. Town of West Hartford](#), 206 Conn. 711, 539 A.2d 573 (1988) (overruled on other grounds by, [St. Joseph's Living Center, Inc. v. Town of Windham](#), 290 Conn. 695, 966 A.2d 188 (2009)).

- 3 Jasper v. Mease Manor, Inc., 208 So. 2d 821 (Fla. 1968); Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 233 N.E.2d 537 (1968).
- 4 Johnson v. Presbyterian Homes of Synod of Fla., Inc., 239 So. 2d 256 (Fla. 1970).
- 5 People ex rel. Nordlund v. Association of Winnebago Home for Aged, 40 Ill. 2d 91, 237 N.E.2d 533 (1968); Toledo Jewish Home for the Aged, Inc. v. Limbach, 53 Ohio St. 3d 52, 559 N.E.2d 451 (1990).
- 6 Jasper v. Mease Manor, Inc., 208 So. 2d 821 (Fla. 1968); Milwaukee Protestant Home for the Aged v. City of Milwaukee, 41 Wis. 2d 284, 164 N.W.2d 289 (1969).
- 7 United Presbyterian Ass'n v. Board of County Com'rs of Jefferson County, 167 Colo. 485, 448 P.2d 967 (1968); United Church of Christ v. Town of West Hartford, 206 Conn. 711, 539 A.2d 573 (1988) (overruled on other grounds by, St. Joseph's Living Center, Inc. v. Town of Windham, 290 Conn. 695, 966 A.2d 188 (2009)); Appeal of Sunny Ridge Manor, Inc., 106 Idaho 98, 675 P.2d 813 (1984); Care Institute, Incorporated-Roseville v. County of Ramsey, 612 N.W.2d 443 (Minn. 2000); City of Richmond v. Virginia United Methodist Homes, Inc., 257 Va. 146, 509 S.E.2d 504 (1999).
- 8 United Presbyterian Ass'n v. Board of County Com'rs of Jefferson County, 167 Colo. 485, 448 P.2d 967 (1968); Haines v. St. Petersburg Methodist Home, Inc., 173 So. 2d 176 (Fla. 2d DCA 1965); Madonna Towers v. Commissioner of Taxation, 283 Minn. 111, 167 N.W.2d 712 (1969).
- 9 United Presbyterian Ass'n v. Board of County Com'rs of Jefferson County, 167 Colo. 485, 448 P.2d 967 (1968); Madonna Towers v. Commissioner of Taxation, 283 Minn. 111, 167 N.W.2d 712 (1969).
- 10 In re Applications of Kansas Christian Home, 268 Kan. 859, 2 P.3d 168 (2000) (provided that the lowest feasible cost is assessed); Bozeman Deaconess Foundation v. Ford, 151 Mont. 143, 439 P.2d 915, 37 A.L.R.3d 558 (1968).
- 11 City of Asbury Park v. State, Division of Tax Appeals, 41 N.J. Super. 504, 125 A.2d 411 (App. Div. 1956); American-Russian Aid Ass'n v. City of Glen Cove, 41 Misc. 2d 622, 246 N.Y.S.2d 123 (Sup 1964), judgment aff'd, 23 A.D.2d 966, 260 N.Y.S.2d 589 (2d Dep't 1965).

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§ 303. Exemption under express statutory authority

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2344

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[Tax exemption of property used by fraternal or benevolent association for clubhouse or similar purposes, 39 A.L.R.3d 640](#)

A fraternal organization is one established to achieve some worthy objective which benefits its members or benefits men and women in general without regard to profit.¹ Exemptions from taxation extended in favor of clubhouses, halls, lodges, and similar property of fraternal, benevolent, or relief societies are the result of constitutional provision or statutory enactment.² The validity of statutes of this type has been sustained repeatedly.³ The general rule that an exemption from taxation is to be strictly construed against the one who asserts the exemption governs in the application of tax exemption provisions to clubhouses and similar property of fraternal and benevolent societies⁴ although such rule is not universally applied.⁵ The question of whether a particular clubhouse, hall, or similar property is exempt from taxation has been decided on a case-by-case basis, with inquiries being made into the specific phraseology of the constitutional or statutory tax exemption provisions applicable, the character and purpose of the particular fraternal or benevolent association which utilized the property, and the facts surrounding the utilization thereof.⁶

A number of cases decided under express exemption-type statutes have denied the exemption because the lodge building under review was primarily used for the social enjoyment of lodge members and was no different in its legal aspect from the clubhouse of an ordinary social club,⁷ or because a portion of the building was utilized to produce a profit, as by being rented in part to others for commercial and revenue-producing purposes.⁸ Moreover, an exemption from taxation has been denied a building under an express-type statute where the electorate in the town in which the building was located did not vote to authorize such an exemption, such vote being a requirement.⁹ However, under a statute requiring that a fraternal society own the property for which exemption is sought, it has been decided that a lodge, as vendee in possession of real property pursuant to a land contract obligating it to pay the purchase price, was the owner thereof within the contemplation of the statute.¹⁰ In one case, the court held that a country club was not organized and operated exclusively for fraternal purposes so as to entitle it to a property tax exemption where there was no common bond among its membership.¹¹

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Footnotes

- 1 [Boise Cent. Trades & Labor Council, Inc. v. Board of Ada County Com'rs](#), 122 Idaho 67, 831 P.2d 535 (1992) (labor council is fraternal organization).
- 2 [Boise Cent. Trades & Labor Council, Inc. v. Board of Ada County Com'rs](#), 122 Idaho 67, 831 P.2d 535 (1992); [Lodge No. 817, Trustees Benev. and Protective Order of Elks v. Supervisor of Assessments of Wicomico County, Md.](#), 292 Md. 533, 439 A.2d 591 (1982); [State v. Johnson](#), 62 N.J.L. 625, 43 A. 573 (N.J. Sup. Ct. 1899).
- 3 [State ex rel. Cragor Co. v. Doss](#), 150 Fla. 486, 8 So. 2d 15 (1942); [Indianapolis Elks Bldg. Corp. v. State Bd. of Tax Com'rs](#), 145 Ind. App. 522, 251 N.E.2d 673, 39 A.L.R.3d 624 (1969); [City of Camden v. Camden County Board of Taxation](#), 121 N.J.L. 262, 2 A.2d 40 (N.J. Sup. Ct. 1938), judgment *aff'd*, 122 N.J.L. 381, 5 A.2d 688 (N.J. Ct. Err. & App. 1939); [State v. Peckard](#), 35 N.D. 298, 160 N.W. 150 (1916).
- 4 [Indianapolis Elks Bldg. Corp. v. State Bd. of Tax Com'rs](#), 145 Ind. App. 522, 251 N.E.2d 673, 39 A.L.R.3d 624 (1969); [Lodge No. 817, Trustees Benev. and Protective Order of Elks v. Supervisor of Assessments of Wicomico County, Md.](#), 292 Md. 533, 439 A.2d 591 (1982); [Worcester Masonic Charity & Educational Ass'n v. Assessors of Worcester](#), 326 Mass. 409, 94 N.E.2d 763 (1950); [Madison Aerie No. 623, Fraternal Order of Eagles, Inc. v. City of Madison](#), 275 Wis. 472, 82 N.W.2d 207 (1957).
- 5 [Board of Com'rs of Rio Grande County v. San Luis Valley Masonic Ass'n](#), 80 Colo. 183, 250 P. 147 (1926); [Temple Lodge No. 6, A. F. & A. M., v. Tierney](#), 37 N.M. 178, 20 P.2d 280 (1933).
- 6 [Boise Cent. Trades & Labor Council, Inc. v. Board of Ada County Com'rs](#), 122 Idaho 67, 831 P.2d 535 (1992).
- 7 [Camp No. 62 Patriotic Order of Americans v. City of Camden](#), 19 N.J. Misc. 115, 17 A.2d 566 (B.T.A. 1941); [Indianapolis Elks Bldg. Corp. v. State Bd. of Tax Com'rs](#), 145 Ind. App. 522, 251 N.E.2d 673, 39 A.L.R.3d 624 (1969); [Lodge No. 817, Trustees Benev. and Protective Order of Elks v. Supervisor of Assessments of Wicomico County, Md.](#), 292 Md. 533, 439 A.2d 591 (1982) (golf course); [People ex rel. New York Lodge, No. 1, B.P.O.E. v. Purdy](#), 179 A.D. 805, 167 N.Y.S. 285 (1st Dep't 1917), *aff'd*, 224 N.Y. 710, 121 N.E. 885 (1918).
- 8 [Senter v. City of Tupelo](#), 136 Miss. 269, 101 So. 372 (1924); [People ex rel. Schenectady Odd Fellows' Temple Ass'n v. McMillan](#), 117 Misc. 600, 187 N.Y.S. 471 (Sup 1921), *aff'd*, 199 A.D. 268, 191 N.Y.S. 946 (3d Dep't 1921).
- 9 [Grand Lodge of Vermont, F. & A. M., v. City of Burlington](#), 104 Vt. 515, 162 A. 368 (1932).
- 10 [Ritchie v. City of Green Bay](#), 215 Wis. 433, 254 N.W. 113, 95 A.L.R. 1081 (1934).
- 11 [Sherwood Forest Country Club v. Litchfield](#), 998 So. 2d 56 (La. 2008), on reh'g in part, 6 So. 3d 141 (La. 2009).

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§ 304. Exemption as charitable institution, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2344

A.L.R. Library

[Tax exemption of property used by fraternal or benevolent association for clubhouse or similar purposes, 39 A.L.R.3d 640](#)

Where there is no express mention of fraternal or lodge societies in the applicable tax exemption provisions, the right to exemption from taxation of fraternal clubhouses, halls, or similar property ordinarily depends upon whether such societies are deemed charitable institutions within the contemplation of tax exemption enactments favoring such institutions¹ and whether the property for which the exemption was claimed is found to be devoted to charitable purposes.²

Whether the property of a veterans' group is entitled to an exemption from taxes under a nonexpress-type statute is dependent largely upon its activities and the utilization of the property at the time when the exemption is sought.³ Although there is authority to the contrary,⁴ a number of cases hold that fraternal and benevolent societies are not institutions of "purely public charity" within the meaning of that phrase in tax exemption provisions, accordingly, that clubhouses or like property of such societies do not qualify for exemption from taxation thereunder.⁵ Further, some cases have decided that clubhouses or similar structures

of fraternal societies were not within the contemplation of provisions exempting the property of charitable or benevolent institutions provided that it is not used for revenue-producing purposes.⁶ A lodge building of a fraternal order is not exempt if the dominant uses of the building are for the social enjoyment of the members because, for the purposes of the exemption statute, such a building cannot be distinguished from the clubhouse of an ordinary social club.⁷ Similarly, in many cases, property of fraternal or benevolent societies has been held to be outside the provisions of a nonexpress-type exemption statute because at least a portion of such property was utilized to produce an income as by being leased for commercial purposes.⁸

Some cases which have granted tax exemptions to fraternal societies under nonexpress-type statutes are predicated upon the ground that the societies had educational as well as charitable purposes,⁹ but others have denied exemptions on the basis that the claimant society was not organized exclusively for educational purposes.¹⁰

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Footnotes

- 1 [York Rite Bodies of Freemasonry of Savannah v. Board of Equalization of Chatham County](#), 261 Ga. 558, 408 S.E.2d 699 (1991); [Indiana State Bd. of Tax Com'rs v. Fraternal Order of Eagles, Lodge No. 255](#), 521 N.E.2d 678 (Ind. 1988); [Curtis v. Androscoggin Lodge](#), No. 24, I.O.O.F., 99 Me. 356, 59 A. 518 (1904); [Ladies Literary Club v. City of Grand Rapids](#), 409 Mich. 748, 298 N.W.2d 422 (1980); [Olmsted Falls Bd. of Edn. v. Tracy](#), 77 Ohio St. 3d 393, 674 N.E.2d 690 (1997); [North Gates Elks Club v. Garner](#), 496 S.W.2d 887 (Tenn. 1973); [Manassas Lodge No. 1380, Loyal Order of Moose, Inc. v. Prince William County](#), 218 Va. 220, 237 S.E.2d 102 (1977).
- 2 [York Rite Bodies of Freemasonry of Savannah v. Board of Equalization of Chatham County](#), 261 Ga. 558, 408 S.E.2d 699 (1991); [Manhattan Masonic Temple Ass'n v. Rhodes](#), 132 Kan. 646, 296 P. 734 (1931); [Ancient and Accepted Scottish Rite of Freemasonry v. Board of County Com'rs](#), 122 Neb. 586, 241 N.W. 93, 81 A.L.R. 1166 (1932); [Appeal of Kiwanis Club of Hudson, Inc.](#), 140 N.H. 92, 663 A.2d 90 (1995); [Olmsted Falls Bd. of Edn. v. Tracy](#), 77 Ohio St. 3d 393, 674 N.E.2d 690 (1997); [Loyal Order of Moose Lodge No. 1137 v. Pennington County](#), 1997 SD 80, 566 N.W.2d 132 (S.D. 1997); [North Gates Elks Club v. Garner](#), 496 S.W.2d 887 (Tenn. 1973); [Baker v. One Piece of Improved Real Property at 607 East 200 South St., Salt Lake City](#), 570 P.2d 1023 (Utah 1977); [Manassas Lodge No. 1380, Loyal Order of Moose, Inc. v. Prince William County](#), 218 Va. 220, 237 S.E.2d 102 (1977).
- 3 [Jefferson Post No. 15, Am. Legion, Dept. of Ky. v. City of Louisville](#), 280 S.W.2d 706, 54 A.L.R.2d 992 (Ky. 1955).
- 4 [Com. ex rel. Luckett v. Grand Lodge of Ky., Ancient Order of Free and Accepted Masons](#), 459 S.W.2d 601 (Ky. 1970); [Manassas Lodge No. 1380, Loyal Order of Moose, Inc. v. Prince William County](#), 218 Va. 220, 237 S.E.2d 102 (1977).
- 5 [Atlanta Masonic Temple Co. v. City of Atlanta](#), 162 Ga. 244, 133 S.E. 864 (1926); [Indiana State Bd. of Tax Com'rs v. Fraternal Order of Eagles, Lodge No. 255](#), 521 N.E.2d 678 (Ind. 1988); [Woman's Club of Topeka v. Shawnee County](#), 253 Kan. 175, 853 P.2d 1157 (1993); [Olmsted Falls Bd. of Edn. v. Tracy](#), 77 Ohio St. 3d 393, 674 N.E.2d 690 (1997); [Most Worshipful Prince Hall Grand Lodge, F. & A. M. of Tex. v. City of Fort Worth](#), 435 S.W.2d 274 (Tex. Civ. App. Fort Worth 1968), writ refused n.r.e., (Feb. 26, 1969).
- 6 [Massenbury v. Grand Lodge F. & A.M.](#), 81 Ga. 212, 7 S.E. 636 (1888); [Elks Theater Co. v. City of New Iberia](#), 143 La. 162, 78 So. 433 (1918); [Trustees of Green Bay Lodge, No. 259, B.P.O.E. of America v. City of Green Bay](#), 122 Wis. 452, 100 N.W. 837 (1904).
- 7 [People v. Dixon Masonic Bldg. Ass'n](#), 348 Ill. 593, 181 N.E. 434 (1932); [Indiana State Bd. of Tax Com'rs v. Fraternal Order of Eagles, Lodge No. 255](#), 521 N.E.2d 678 (Ind. 1988); [Lacy v. Davis](#), 112 Iowa 106, 83 N.W. 784 (1900); [Boston Lodge, No. 10, B.P.O.E. v. City of Boston](#), 217 Mass. 176, 104 N.E. 453 (1914); [Olmsted Falls Bd. of Edn. v. Tracy](#), 77 Ohio St. 3d 393, 674 N.E.2d 690 (1997); [Loyal Order of Moose Lodge No. 1137 v. Pennington County](#), 1997 SD 80, 566 N.W.2d 132 (S.D. 1997); [North Gates Elks Club v. Garner](#), 496 S.W.2d 887 (Tenn. 1973); [Baker v. One Piece of Improved Real Property at 607 East 200 South St., Salt Lake City](#), 570 P.2d 1023 (Utah 1977).

- 8 Creel v. Pueblo Masonic Bldg. Ass'n, 100 Colo. 281, 68 P.2d 23 (1937); Indiana State Bd. of Tax Com'rs v. Fraternal Order of Eagles, Lodge No. 255, 521 N.E.2d 678 (Ind. 1988); Sir Walter Lodge No. 411, I. O. O. F., v. Swain, 217 N.C. 632, 9 S.E.2d 365 (1940); Portland Hibernian Benev. Soc. v. Kelly, 28 Or. 173, 42 P. 3 (1895); Grand Lodge of Masons v. City of Burlington, 84 Vt. 202, 78 A. 973 (1911); State v. McDowell Lodge, No. 112, A.F. & A.M., 96 W. Va. 611, 123 S.E. 561, 38 A.L.R. 31 (1924).
- 9 State Bd. of Tax Com'rs v. Trustees of Adoniram Lodge of Perfection, 14 degrees, Ancient Accepted Scottish Rite Valley of Indianapolis, N.M.J., 145 Ind. App. 300, 250 N.E.2d 605 (1969); Cumberland Lodge No. 8, F. & A.M. v. City of Nashville, 127 Tenn. 248, 154 S.W. 1141 (1913).
- 10 Masonic Bldg. Ass'n of Stamford v. Town of Stamford, 119 Conn. 53, 174 A. 301 (1934); Ladies Literary Club v. City of Grand Rapids, 409 Mich. 748, 298 N.W.2d 422 (1980).

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§ 305. YMCA and similar associations

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2344

A Young Men's Christian Association or similar organization is a "charitable" or "benevolent" institution within the meaning of those terms as used in enactments granting exemptions from taxation of the property of institutions of that character.¹ A day-care center operated by a YMCA was exempt because the YMCA is a charitable institution, and the day care offered scholarships to those who could not afford it.² However, a YMCA fitness center was considered not exempt from taxation.³ It is likewise held that such associations are religious and educational institutions within the contemplation of tax exemption enactments.⁴ The tax exemption of such associations is to be strictly but reasonably construed.⁵

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Footnotes

¹ [Little v. City of Newburyport](#), 210 Mass. 414, 96 N.E. 1032 (1912); [In re Young Men's Christian Ass'n Assessment](#), 106 Neb. 105, 182 N.W. 593, 34 A.L.R. 1060 (1921); [Commonwealth v. Lynchburg Y.M.C.A.](#), 115 Va. 745, 80 S.E. 589 (1913).

For-profit health clubs and Young Men's Christian Associations (YMCAs) were not similarly situated, and thus, an equal protection challenge to the statute exempting from taxation property owned by the YMCAs did not pass the threshold inquiry of whether the legislation treated the class differently from all others similarly situated because the YMCAs' eleemosynary mission set them apart from for-profit health clubs.

Lake Country Racquet and Athletic Club, Inc. v. Morgan, 289 Wis. 2d 498, 2006 WI App 25, 710 N.W.2d 701 (Ct. App. 2006).

2 Camp Foster YMCA v. Dickinson County Bd. of Review, 503 N.W.2d 409 (Iowa 1993).

3 Young Men's Christian Ass'n of Columbia-Willamette v. Department of Revenue, 308 Or. 644, 784 P.2d 1086 (1989).

4 In re Syracuse Y.M.C.A., 126 Misc. 431, 213 N.Y.S. 35 (Sup 1925).

5 Young Men's Christian Ass'n of St. Louis and St. Louis County v. Sestric, 362 Mo. 551, 242 S.W.2d 497 (1951).

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e. Cemeteries

§ 306. Generally

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West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2356

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 99](#) (Petition or application—To compel taxing authority to set aside assessment of nonprofit cemetery)

In general, cemeteries are exempted from taxation by express statutory or constitutional provision, without regard to the ownership of a cemetery or the question of whether the right of burial is limited to a particular class or open to the public generally or whether burial lots are sold to individuals for the use of their families for pecuniary consideration.¹ An exemption granted to a cemetery will embrace all property within the cemetery limits which is essential to the use and enjoyment of the land for the purposes contemplated in its certificate of incorporation.² It includes land adjoining the burial grounds, owned and occupied exclusively for cemetery purposes.³ Such an exemption is favored upon grounds of public policy.⁴ One reason for the exemption is the difficulty of collecting a tax thereon and the obvious impropriety of selling the graves of the dead in order to pay the expenses of carrying on the government of the living.⁵

The determination in a particular case of whether an organization is entitled to an exemption as a cemetery depends upon such factors as its functions, structure, nature, etc., the use and purposes to which its property is devoted, and the varying terminology of the exemption enactments.⁶ The term "cemetery" as used in tax exemption enactments has been construed as an area or place where the dead are buried, a place of burial,⁷ and as a place set apart either by municipal authority or private enterprise for the interment of the dead.⁸

An exemption from taxation of public burying grounds and of property of cemetery associations is not confined to graves or land already occupied by corpses but extends also to lands owned and held for such future needs, reasonable in amount and not beyond reasonable anticipation, as are incidental to operating a cemetery.⁹ The exemption has been held limited, however, to cemetery land being used for burials, in the process of being sold for graves, or being held for sale in a relatively fixed span of time.¹⁰

The claimant of an exemption of cemetery property from taxation must show that his or her property is within the class entitled to the exemption.¹¹

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Footnotes

- 1 [Laurel Hill Cemetery Ass'n v. City and County of San Francisco](#), 81 Cal. App. 2d 371, 184 P.2d 160 (1st Dist. 1947); [Melwood, Inc. v. DeKalb County](#), 255 Ga. 247, 336 S.E.2d 571 (1985); [Metairie Cemetery Ass'n v. Board of Assessors](#), 37 La. Ann. 32, 1885 WL 6260 (1885); [Grand View Park Cemetery Ass'n to Register Title to Certain Land v. City of Edina](#), 257 N.W.2d 329 (Minn. 1977); [In re Northview Services, Inc.](#), 183 W. Va. 683, 398 S.E.2d 165 (1990); [Highland Memorial Park, Inc. v. City of New Berlin](#), 67 Wis. 2d 363, 227 N.W.2d 72 (1975).
- 2 [Oak Lawn Cemetery of Baltimore County v. Baltimore County Com'rs](#), 174 Md. 280, 198 A. 600, 115 A.L.R. 1478 (1938); [In re Northview Services, Inc.](#), 183 W. Va. 683, 398 S.E.2d 165 (1990).
- 3 [Highland Memorial Park, Inc. v. City of New Berlin](#), 67 Wis. 2d 363, 227 N.W.2d 72 (1975).
- 4 [Laurel Hill Cemetery Ass'n v. City and County of San Francisco](#), 81 Cal. App. 2d 371, 184 P.2d 160 (1st Dist. 1947); [Oak Lawn Cemetery of Baltimore County v. Baltimore County Com'rs](#), 174 Md. 280, 198 A. 600, 115 A.L.R. 1478 (1938).
- 5 [Laurel Hill Cemetery Ass'n v. City and County of San Francisco](#), 81 Cal. App. 2d 371, 184 P.2d 160 (1st Dist. 1947); [Oak Lawn Cemetery of Baltimore County v. Baltimore County Com'rs](#), 174 Md. 280, 198 A. 600, 115 A.L.R. 1478 (1938); [Proprietors of Mt. Auburn Cemetery v. City of Cambridge](#), 150 Mass. 12, 22 N.E. 66 (1889); [In re Northview Services, Inc.](#), 183 W. Va. 683, 398 S.E.2d 165 (1990).
- 6 [National Cemetery Ass'n of Missouri v. Benson](#), 344 Mo. 784, 129 S.W.2d 842, 122 A.L.R. 893 (1939).
- 7 [Metairie Cemetery Ass'n v. Board of Assessors](#), 37 La. Ann. 32, 1885 WL 6260 (1885); [Grand View Park Cemetery Ass'n to Register Title to Certain Land v. City of Edina](#), 257 N.W.2d 329 (Minn. 1977); [In re Northview Services, Inc.](#), 183 W. Va. 683, 398 S.E.2d 165 (1990).
- 8 [Grand View Park Cemetery Ass'n to Register Title to Certain Land v. City of Edina](#), 257 N.W.2d 329 (Minn. 1977); [National Cemetery Ass'n of Missouri v. Benson](#), 344 Mo. 784, 129 S.W.2d 842, 122 A.L.R. 893 (1939).
- 9 [Melwood, Inc. v. DeKalb County](#), 255 Ga. 247, 336 S.E.2d 571 (1985); [Mountain View Cemetery Co. v. Massey](#), 109 W. Va. 473, 155 S.E. 547 (1930); [Highland Memorial Park, Inc. v. City of New Berlin](#), 67 Wis. 2d 363, 227 N.W.2d 72 (1975).
- 10 [Grand View Park Cemetery Ass'n to Register Title to Certain Land v. City of Edina](#), 257 N.W.2d 329 (Minn. 1977).
- 11 [Oak Lawn Cemetery of Baltimore County v. Baltimore County Com'rs](#), 174 Md. 280, 198 A. 600, 115 A.L.R. 1478 (1938); [National Cemetery Ass'n of Missouri v. Benson](#), 344 Mo. 784, 129 S.W.2d 842, 122 A.L.R. 893 (1939).

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e. Cemeteries

§ 307. Exemption for caretaker's home, office, and personality

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West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2356

The administrative offices of a cemetery have been considered part of the cemetery property and are exempt.¹ However, a commercial and administrative building owned and located on the grounds of a cemetery has also been found subject to taxation.² In some cases, a caretaker's residence on the cemetery grounds has been found exempt;³ in others, such property is not exempt.⁴

In the absence of a specific exemption of personal property, an exemption from taxation will not ordinarily extend to cemetery personality.⁵ If applied exclusively to carrying out the purposes or objects of incorporation, improvement funds used for the maintenance of cemetery property are, in the absence of statutory language to the contrary, held to be exempt from taxation.⁶ However, where a use for other than cemetery purposes is within the discretion of the company and where it appears that the funds may not be devoted exclusively to care and maintenance of the cemetery, that exemption will not attach.⁷ If the exempting provision indicates that the grant was not intended to extend to cemetery funds, the exemption will not be allowed irrespective of a usage of the funds for cemetery maintenance or perpetual care.⁸

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Footnotes

- 1 Proprietors Rural Cemetery in Worcester v. Commissioners of Worcester County, 152 Mass. 408, 25 N.E.
618 (1890); Grand View Park Cemetery Ass'n to Register Title to Certain Land v. City of Edina, 257 N.W.2d
329 (Minn. 1977).
- 2 In re Northview Services, Inc., 183 W. Va. 683, 398 S.E.2d 165 (1990).
- 3 Proprietors Rural Cemetery in Worcester v. Commissioners of Worcester County, 152 Mass. 408, 25 N.E.
618 (1890); City of Wellsville v. Kinney, 66 Ohio St. 2d 136, 20 Ohio Op. 3d 156, 420 N.E.2d 123 (1981).
- 4 Supervisor of Assessments of Baltimore County v. Trustees of Bosley Methodist Church Graveyard, 293
Md. 208, 443 A.2d 91 (1982).
- 5 Rosedale Cemetery Association v. Linden, 73 N.J.L. 421, 63 A. 904 (N.J. Sup. Ct. 1906); Hollywood
Cemetery Co. v. Commonwealth, 123 Va. 106, 96 S.E. 207 (1918); In re Northview Services, Inc., 183 W.
Va. 683, 398 S.E.2d 165 (1990).
- 6 Cypress Lawn Cemetery Ass'n v. City and County of San Francisco, 211 Cal. 387, 295 P. 813 (1931);
Greenbush Cemetery Ass'n v. Van Natta, 49 Ind. App. 192, 94 N.E. 899 (1911).
- 7 Hollywood Cemetery Co. v. Commonwealth, 123 Va. 106, 96 S.E. 207 (1918).
- 8 Commonwealth v. Lexington Cemetery Co., 114 Ky. 165, 24 Ky. L. Rptr. 924, 70 S.W. 280 (1902).

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